ratios of Ohio Power were 56.3 percent debt and 43.7 percent preferred and common equity.

It is proposed that the annual interest rate on the Notes shall be equal to the effective interest cost of Ohio Power's most recently issued series of first mortgage bonds, which was its 10¾ percent series due 1989, issued in September 1979, which have an effective cost of 10.75 percent per annum. The Notes to be issued by COCO would mature 30 years from the date of issuance and would be prepayable at any time without penalty.

It is proposed that the return on equity applicable to the capital contributions shall be based on the weighted cost of money of Ohio Power's last issue of preferred stock and the rate of return on common equity determined and allowed by the Federal Energy Regulatory Commission ("FERC") in its most recent wholesale rate proceedings involving Ohio Power. Since there is at present no such applicable FERC order, it is proposed that the cost of common equity capital be set (until there is such an applicable FERC order) at 13 percent, which rate is no more than the level allowed in the most recent order of the Public Utilities Commission of Ohio in retail rate proceedings involving Ohio return on equity applicable to the capital contribution would 12.03 percent, as shown in the following table:

Table

[Percent]

Component	Capitalization ratio	Factor 100	Cost	Weighted cost
Preferred Stock	11.9	27.2	[1]9.46	2.57
Common Equity	31.8	72.8	13.00	9.46
Total	43.7	100.0		12.03

[1]Cost to Ohio Power of its most recent preferred stock issue, its $2.27 series, par value $25, issued in March 1978.

It is also proposed that the presently allowed 6 percent rate of return, after taxes, for COCO on its existing common equity (including retained earnings and declared but unpaid dividends) under the Coal Contract be increased to a rate of 13 percent on said common equity (excluding retained earnings and declared but unpaid dividends). Ohio Power and COCO therefore propose to amend the Coal Contract to provide that the price to be paid by Ohio Power for coal delivered thereunder be an amount equal to the sum of: (a) the entire cost of COCO of mining, preparing and delivering such coal; (b) interest on COCO's indebtedness, including the Notes; and (c) an additional amount sufficient to give COCO a return, after taxes, of 13 percent on its common equity prior to the proposed transfer of assets and a return, after taxes, of 12.03 percent on the new capital contributions, both such rates to be adjusted to reflect the return last allowed to Ohio Power by FERC with respect to its common equity in wholesale into proceedings involving Ohio Power, such adjustment to occur on January 1 of the year following the year in which such FERC order is issued. It is stated that until this Commission acts on the instant filing the cost of coal shall include the rate of return currently allowed under the Coal Contract.

It is further stated that it was originally contemplated that the proposed transfer of Ohio Power's investment in the Preparation Plant would be consummated prior to the date of its commercial operation. However, since it was completed and put into operation on February 4, 1980, prior to the date the filing herein was made, Ohio Power has instituted an interim billing procedure to recover its carrying charges associated with such investment. Such billings, which include compensation for the cost of invested capital at a net-of-tax composite rate of 11.31 percent, have been made subject to adjustment or refund, as may be ordered by this Commission.

COCO claims exemption from the competitive bidding requirements of Rule 50 for its issuance of Notes to Ohio Power pursuant to Rule 50(a)(3).

The fees and expenses to be incurred in connection with the proposed transactions will be suplied by amendment. It is stated that no State and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may not later than August 4, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said amended application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-20655 Filed 7-10-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16956; File No. SR-NASD-78-3]

Practices in Fixed Price Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Notice of issuance of letter.

SUMMARY: The Commission announced today that it has sent to the National Association of Securities Dealers, Inc. (the "NASD") a letter concerning a proposed rule change filed by the NASD to amend its Rules of Fair Practice governing member practices in fixed price offerings of securities. The letter reflects the Commission's concerns regarding certain aspects of the proposed rule change.

FOR FURTHER INFORMATION CONTACT: Janet R. Zimmer, Esq. (202) 272-2863, Kathleen McGann, Esq. (202) 272-2855, or Lucy A. Weisz, Esq. (202) 272-2840, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On May 31, 1978, pursuant to Section 19(b) of the Securities Exchange Act of of 1934, the NASD filed a proposed rule change to amend Article III, section 24 (governing selling concessions) and Article III, Section 8 (governing swap transactions) of its Rules of Fair Practice and to add a new Section 36 of Article III (governing recapture of selling concessions) and a new Section 1(m) of Article II to define the term "fixed price offering" (File No. SR-NASD-78-3).[1] The letter sent today

[1]Notice of the proposed rule change was given by Securities Exchange Act Release No. 15020 (August 2, 1978), 43 FR 35446 (August 9, 1978). The Commission issued a subsequent release that solicited additional comment on the issues raised by the proposed rule change and announced public hearings to be held on these issues. Securities

Footnotes continued on next page

by the Commission to the NASD reflects the Commission's comcerns regarding certain aspects of proposed Section 24 and proposed Section 8.

The text of the letter follows:

Mr. Gordon S. Macklin, President,
National Association of Securities Dealers, Inc., 1735 K Street, N.W., Washington, D.C.

Dear Mr. Macklin: This letter is in reference to a proposed rule change concerning various practices in connection with fixed price offerings of securities (File No. SR–NASD–78–3), filed by the National Association of Securities Dealers, Inc. (the "NASD") on May 31, 1978, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act").

Notice of the proposed rule change was given in Securities Exchange Act Release No. 15020 (August 2, 1978), 43 FR 35446 (August 9, 1978). In May 1979, because of the significance and complexity of the issues raised by the proposed rule change, the Commission solicited additional comments and announced public hearings to be held on these issues. Securities Exchange Act Release No. 15807 (May 9, 1979), 44 FR 28574 (May 15, 1979). These hearings concluded November 20, 1979, and the comment period expired December 15, 1979.

Presented below are a description of the proposed rule change and a discussion of certain revisions the Commission believes may be necessary or appropriate.

I. Description of the Proposed Rule Change and of the Commission's Review

The proposed rule change would amend Articles II and III of the NASD's Rules of Fair Practice to regulate or prohibit a variety of practices that the NASD believes might be construed as providing a discount from fixed prices in underwritten public offerings. First, the proposed amendments to Article III, Section 8 would impose a more explicit prohibition on a member's taking securities in trade at more than their fair market price. Second, the proposed amendments to Article III, Section 24 would prohibit the granting of selling concessions, discounts, or other allowances to persons other than brokers or dealers engaged in the investment banking or securities business and would permit such payments to be made or received only as consideration for services rendered in distribution. The amendments to Section 24 also would impose a number of related requirements. Third, a new Section 36 of Article III would prohibit an NASD member from selling or placing with any related person of the member securities that are part of a fixed price offering. Fourth, a proposed amendment to Article II of the Rules of Fair Practice would add a new section defining the term "fixed price offering." Finally, as part of the proposed rule change, the Board of Governors of the NASD would append to the amendments to Section 8 and 24, and to the new Section 36, several interpretive statements relating to the meaning and application of those sections.

Pursuant to Section 19(b) of the Act, the Commission has reviewed the proposed rule change and has considered the data, views and arguments that were submitted in the hearings and in written comments received in this proceeding. Section 19(b)(2) provides that, in order to approve the proposed rule change, the Commission must find it consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD.

In particular, the Commission has reviewed the proposed rule change in light of certain requirements of Section 15A of the Act governing the rules of the NASD. Section 15A(b)(2) requires that the NASD have the capacity to enforce compliance by its members with its rules. Section 15A(b)(6) provides, among other things, that the rules of the NASD must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. Section 15A(b)(6) also provides that NASD rules must not be designed to permit unfair discrimination between customers, issuers, brokers or dealers, to fix minimum profits, or to impose any schedule or fix rates of commissions, allowances, discounts or other fees to be charged by NASD members. In addition, Section 15A(b)(9) provides that the rules of the NASD must not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

For the reasons discussed below, the Commission is concerned that the NASD Board's interpretations of proposd Section 24, limiting "soft dollar" payments for research, may not be consistent with the requirements of the Act. In addition, the Commission believes that a more flexible definition of "fair market price" in proposed Section 8 may better achieve the intended purposes of that section and Section 24. The balance of this letter describes the Commission's concerns about the proposed rule change and suggests ways in which the NASD could revise its proposal to address these concerns.

II. Proposed Section 24(a)—Soft Dollar Payments for Research

A. *The Proposal as Filed.* Section 24(a), as proposed to be amended, would limit the grant or receipt of discounts in connection with the sale of securities that are part of a fixed price offering. It would provide that a member may not grant or receive selling concessions, discounts, or other allowances except as consideration for services rendered in distribution and may not grant such selling concessions, discounts, or other allowances to anyone other than a broker or dealer actually engaged in the investment banking or securities business.

The interpretation by the NASD Board of proposed Section 24 would impose limitations that troubled many commentators. First, the Board's interpretation provides that a dealer has rendered "services in distribution" in connection with the sale of securities from a fixed price offering if the dealer is either an underwriter of a portion of that offering or has engaged in some selling effort with respect to the sale. The Board's interpretation does not otherwise specify what would constitute a service in distribution, except that it provides that furnishing a customer with research will not by itself constitute sufficient selling effort to satisfy Section 24; rather, the interpretation states, "some direct selling contact on a particular offering will be necessary." The Commission assumes, as did several of the commentators, that the interpretation requires some direct selling contact with the particular customer on that offering and that a broker-dealer that was not an underwriter would not fulfill the services in distribution requirement if it failed to make such direct contact.

Some commentators have stated that the NASD Board's "services in distribution" interpretation

---

Footnotes continued from last page
Exchange Act Release No. 15807 (May 9, 1979), 44 FR 28574 (May 15, 1979). Sixteen witnesses testified at the hearings and 51 comment letters have been received, including the NASD's most recent submission, "Analysis of The Record Developed In The Matter of Papilsky Hearings From The Perspective of Statutory Authority" (March 3, 1980). All comments and transcripts of the hearings are available for inspection at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C.

The issues associated with the proposed rule change are commonly identified by reference to a judicial decision, *Papilsky v. Berndt* [1976–1977 Transfer Binder] Fed. Sec. L. Rep. (CCH) § 95,627 (S.D.N.Y. 1976).

discriminates unfairly against dealers who are not underwriters and who have not made any selling contact with a customer before being designated by that customer to receive selling concessions, discounts, or other allowances in fixed price offerings on the basis of the research they have furnished to the customer. These commentators argue that research is a fundamental part of the distribution process since institutional investors frequently purchase securities on the basis of research rather than as a result of direct selling contact. They argue, therefore, that research *per se* should be considered a service in distribution.

The second feature of the NASD Board's interpretations of proposed Section 24 that troubled commentators is the interpretation of the phrase "selling concessions, discounts, or other allowances." Essentially, that interpretation provides that an NASD member who (i) supplies another person with services or products that are "commercially available" or are provided by the member to that person or to others for cash or some other agreed upon consideration, and (ii) also retains or receives selling concessions, discounts, or other allowances from that person's purchases in a fixed price offering, would be deemed to be improperly granting a selling concession, discount, or other allowance to that person unless the member were fully compensated for those services or products from sources other than the selling concession, discount, or allowance retained or received on the sale.

The practical effect of this interpretation, as further amplified by the NASD Board, would be generally to permit "soft-dollar" arrangements involving in-house research furnished on a "goodwill" basis to customers who purchase securities in a fixed price offering, while precluding such arrangements involving third-party research that was purchased by a broker-dealer (other than one who was acting as the exclusive distributor of that product or service) and distributed on a "goodwill" basis. In addition, a firm would be precluded from providing any research (including its own in-house research) to one customer for cash, or for brokerage commissions, and to another for soft dollars in connection with a fixed price offering. Although the interpretation would apply to all NASD members, several commentators have asserted that the practical effect of the interpretation would be to discriminate unfairly against, and impose unnecessary burdens on, firms that have limited in-house research capabilities, or that derive a substantial portion of their revenues from research services and cannot afford to provide research on a "goodwill" basis.

In light of the above, the Commission is concerned that the proposed rule change, as filed, may not be consistent with the requirements, in Section 15A(b)(6) and 15(A(b)(9) of the Act, that the rules of the NASD may not unfairly discriminate among brokers or dealers or impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

B. *Alternative Formulations of Section 24.* The NASD stated at the hearings that it would consider modifying the prohibitions that would be imposed by the NASD Board's interpretations of proposed Section 24. The NASD has suggested several areas for possible further inquiry, and raised basically two alternative approaches that could help alleviate the problems that troubled the commentators.[1]

Alternative 1: Under the first alternative: (a) the "services in distribution" interpretation would be revised so that the furnishing of *bona fide* research, defined in a manner similar to the Commission's interpretation under Section 28(e) of the Act,[2] would be deemed to be a sufficient service in distribution; (b) the "commercially available" prohibition that derives from the Board's interpretation would be redefined so as not to apply to such *bona fide* research; and (c) the "agreed upon consideration" limitation that derives from the Board's interpretation would be modified to allow research supplied to one customer for cash or other agreed upon consideration to be made available to another customer on a "goodwill" basis in connection with a fixed price offering.

By including research as a service in distribution, this alternative would permit any broker-dealer, not just a member of the underwriting syndicate, to receive soft dollar designations for research services without having to show that it had engaged in direct selling contact with the customer. The additional revisions would expand the types of research arrangements that would not be considered a discount. Under this approach, the determination as to whether a discount had been granted would depend on the nature of the agreement between the customer and broker-dealer and not on whether the research provided was otherwise commercially available or had a readily ascertainable cash or cash equivalent value.

The Commission recognizes that this alternative has certain advantages over the filed interpretation of proposed Section 24. First, the interpretation embodied in the revised approach may be more easily enforceable since it would not be necessary to determine whether a designated broker-dealer had direct selling contact with a customer or whether "substantially identical" research was being offered by others on a cash or cash equivalent basis. Second, the revised approach would appear to alleviate some potential anticompetitive burdens imposed on firms that distribute purchased "third-party research," as opposed to research generated "in-house", on a "goodwill" basis to customers.

The Commission believes, however, that this alternative, by maintaining the distinction between research provided only for "goodwill" and research provided for cash or other agreed upon consideration may impose undue burdens on firms that cannot afford to provide research solely on a "goodwill" basis. In addition, this approach seems to focus more on appearances than on the economic reality of research arrangements as a means of adjusting the value received by a customer paying the public offering price in a fixed price offering. Whether or not the broker-dealer and its customer have agreed on a specific and identifiable *quid pro quo*, the furnishing of research confers some added value. Accordingly, it may not be appropriate to distinguish, for purposes of defining what constitutes a discount, between arrangements that embody such an explicit understanding and those that do not. Indeed, the Commission is concerned that the drawing of such distinctions, which both the filed interpretation and this alternative would do, would tend to promote artificial compensation arrangements in which all parties know, but never explicitly state, that payment is expected for research services. Finally, the restrictions imposed on research by the first alternative may not be necessary or appropriate in furtherance of the purposes of the Act. For these reasons, the Commission believes that the first alternative suggested by the NASD fails to address adequately the Commission's concerns with regard to the NASD's treatment of research in the proposed rule change, as filed.

Alternative 2: The second alternative suggested by the NASD at the hearings

[1] In the Matter of Papilsky Hearings (Proposed Rule Change by NASD), Securities and Exchange Comm'n File No. 4-282, at 979-82 (November 20, 1979).

[2] Securities Exchange Act Release No. 12251 (March 24, 1976).

would be to treat the provision of *bona fide* research as a sufficient service in distribution, as in the first alternative, but also to place such research in a class by itself so that, unlike other products or services, it could be furnished for soft dollars (even if the consideration were explicitly agreed upon) without being considered to be an improper discount for purposes of Section 24. The record includes several policy arguments for treating research as *sui generis* in this fashion. First, a number of commentators have argued that providing research is a valuable service that constitutes a fundamental part of the distribution process and should, therefore, be protected. Second, several commentators have maintained that soft dollar payments for research have been prevalent for years with no adverse effect on the fixed price underwriting system and that this practice does not give rise to the abuses that proposed Section 24 is designed to prevent. The NASD itself suggested at the hearings that none of the restrictions on *bona fide* research in the proposed Section 24 as filed or in the first alternative are essential to the operation of a fixed price offering.

This second, more liberal alternative appears to eliminate most effectively any potentially unfair discrimination between firms that produce extensive in-house research for distribution to their customers and other firms (including a number of smaller and regional firms having limited in-house research capabilities, or none at all) that provide their customers with research produced by third parties. In addition, the Commission believes the second alternative most clearly and honestly expresses the economic realities of current research compensation practices, which appear to have existed for some time now without any demonstrated harm to the underwriting system. The Commission believes, therefore, that the second alternative is better designed than the first alternative or the proposal as filed to carry out the purposes under the Act that the proposed rule change is intended to promote.

III. Proposed Section 8—Swaps

Proposed Section 8 of Article III is another area of the proposed rule change the Commission believes the NASD should be re-examined. Section 8 is intended to prohibit overtrading in swap transactions that are effected in connection with fixed price offerings and would require members to purchase securities taken in trade at their "fair market price." As filed, proposed Section 8 defines "fair market price" to mean a price not higher than the lowest independent offer for the securities at the time of purchase. In effect, proposed Section 8 would establish the lowest independent offer as a point below which a swap transaction could not, under any circumstances, be deemed to violate the rule.

The Commission is concerned that, as the NASD stated at the hearings, proposed Section 8 would sometimes permit the acceptance of swapped securities at a price in excess of their actual fair market value. For example, since propose Section 8 does not required that the lowest independent offer be determined with reference to the size of a transaction, it would permit a block of securities, including debt securities, to be purchased at a price equal to that offered for a much smaller quantity even though the block might otherwise trade at a discount. In addition, since most dealers usually buy at their bids and not at their offers, the Commission, is concerned that, regardless of the size of the transaction, a dealer's purchase of securities at the lowest offer could, in many instances, constitute an overtrade when compared to the dealer's normal pattern of trading.

Even if permissible under proposed Section 8, the acceptance of swapped securities at a price in excess of that a dealer would pay in the absence of the customer's purchase of underwritten securities in a fixed price offering has the effect of reducing or even eliminating the dealer's selling concession and, accordingly, could be considered to confer a discount prohibited under proposed Section 24. The Commission is concerned that this result could be confusing to NASD members and, in fact, may be contrary to the purposes of the proposed rule change. The Commission, therefore, requests the NASD to re-examine proposed Section 8 with a view toward reconciling the apparent inconsistencies between that section and propose Section 24.

The Commission is aware that, in certain instances, it may be difficult to determine precisely the fair market price of securities taken in trade and that, therefore, there may be advantages in having objective criteria to aid in this determination. The Commission believes, however, that any objective standard selected should be designed to account for the size of a transaction and to prohibit a broker-dealer from accepting swapped securities at a price in excess of what it would pay for the same amount of securities in a transaction having similar characteristics but not involving a fixed price offering. The Commission is concerned that the formulation of propose Section 8, as filed, may not achieve this goal and encourages the NASD to re-evaluate that section to determine how best to arrive at the desired result.

One possible approach would be to eliminate the safe harbor provisions for transactions at or below the lowest independent offer and, instead, to use the lowest offer as a guideline rather than a fixed standard for determining whether a trade has taken place at the fair market price. Under such an approach, a transaction occurring at or below the lowest independent offer would be presumed to have taken place at the fair market price (although the NASD would be able to rebut that presumption), while a transaction above the lowest independent offer would place the burden upon the member to justify the higher price. This approach would allow the NASD to take into account the size of the particular transaction, the member's pattern of trading and other relevant circumstances in determining whether an overtrade had occurred.

Another approach might be to select a standard other than the lowest independent offer that more closely approximates the price at which dealers generally purchase securities, *i.e.*, at the bid. Such an approach would provide a safe harbor only for those transactions occurring below the highest independent bid for the securities. In evaluating this approach, the NASD should consider how it could account for the size of particular transactions.

The Commission encourages the NASD to consider the two approaches suggested above, as well as others, in an effort to develop an alternative formulation of Section 8 that addresses the Commission's concerns. The NASD's formulation should, of course, take into account all relevant aspects of normal swapping practices. For example, the NASD should clarify how the fair market price test would be applied in circumstances where the terms of a swap transaction were agreed upon at a time other than the time of purchase of the underwritten securities. The Commission also believes that the NASD's examination procedures to detect prohibited overtrades should be designed with this and the Commission's other concerns in mind.

IV. Conclusion

The NASD, at the hearings, has already indicated its willingness to re-examine the aspects of the proposed rule change discussed above and to consider revising the proposal

accordingly. The Commission hopes that, after considereing the Commission's concerns, the NASD will file an amended rule change proposal that responds to the concerns addressed above. Of course, the Commission would not be able to reach a final determination to approve the proposed rule change as so amended until notice of amendments had been published and the Commission had given full consideration to any comments received in response to that notice.

The Commission wishes to thank the NASD for its continued cooperation throughout these proceedings and looks forward to a prompt resolution of this matter.

By the Commission, (Chairman Williams, Commissioners Loomis and Friedman), Commissioner Evans dissenting.

George A. Fitzsimmons,

Secretary.

July 3, 1980

[FR Doc. 80-20657 Filed 7-10-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1866]

North Dakota; Declaration of Disaster Loan Area

All counties within the State of North Dakota constitute a disaster area as a result of drought conditions caused by natural disasters beginning in the Fall of 1979 through May 1980. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on January 5, 1981, and for economic injury until the close on April 3, 1981, at: Small Business Administration, Distict Office, 657 2nd Avenue, North, Room 218, P.O. Box 3086, Fargo, North Dakota 58108, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 3, 1980.

A Vernon Weaver,

Administrator.

[FR Doc. 80-20773 Filed 7-10-80; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 81 (Rev. 10), Amdt. 6]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority of the Commissioner of Internal Revenue to approve Schedule A (5 CFR 213.3102(u)) appointments for the severely physically handicapped; and, to approve extension of details beyond 120 days is delegated to subordinate officials. The text of the delegation order appears below.

EFFECTIVE DATE: July 22, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Philip P. Russo, Internal Revenue Building, Room 3316, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 566-3161 (not toll free).

This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive which appeared in the **Federal Register** for Wednesday, November 8, 1978.

D. S. Burckman,

Director, Personnel Division.

Date of issue: July 7, 1980.

Effective date: July 22, 1980.

Authority To Approve Extension of Details Beyond 120 Days and To Approve Appointment of Severely Physically Handicapped

The authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 177-19 (Revision No. 1) and the Office of Personnel Management to approve the extension of details beyond 120 days, and to approve the appointment of the severely physically handicapped is delegated as specified herein:

The Director, Personnel Division is authorized to detail employees to higher grade positions for up to one year during major reorganizations. This authority may not be redelegated.

The Regional Commissioner and the Director, National Office Resources Management Division are authorized to:

1. Approve extensions of details beyond 120 days to same or lower grade positions in 120-day increments for up to one year, and up to 240 days for details to higher grade positions which are not during major reorganizations;

2. Approve the appointment of severely physically handicapped persons (Schedule A) under 5 CFR 213.3102(u).

The authority cited in 1. and 2. may be redelegated no lower than the Chief, Personnel Branch and the Chief, National Office Personnel Branch.

The authority to extend employee details to unclassified positions beyond 120 days is not granted by this Delegation Order. Such extensions require OPM approval.

This Amendment supplements Chart 2 and Chart 6 of Attachment B to Delegation Order No. 81 (Rev. 10), issued April 16, 1979, which is printed in the **Federal Register** dated April 9, 1979, Vol. 44, Number 69, Pages 21110–21133; and supersedes Delegation Order No. 81 (Rev. 10), Amend. 1, issued April 30, 1979.

William E. Williams,

Acting Commissioner.

FR Doc. 80-20777 Filed 7-10-80; 8:45 am]

BILLING CODE 4830-01-M

[Delegation Order No. 11 (Rev. 12)]

Delegation of Authority

AGENCY: Internal Revenue Service.

ACTION: Delegation of authority.

SUMMARY: The authority of the Commissioner of Internal Revenue to accept or reject offers in compromise is redelegated as set forth in the text of the delegation order which appears below.

EFFECTIVE DATE: July 7, 1980.

FURTHER INFORMATION CONTACT: Mr. Fidelio Calderon, 1111 Constitution Ave. NW., Room 7539 CP:C:O, Washington, D.C. 20224, (202) 566–4471 (not toll free).

This document does not meet the criteria for significant Regulations set forth in paragraph 8 of the Treasury Directive which appeared in the **Federal Register** for Wednesday, November 8, 1978.

J. R. Starkey,

Director, Collection Division.

Date of issue: July 7, 1980.

Effective Date: July 7, 1980.

Authority To Accept or Reject Offers in Compromise

The authority vested in the Commissioner of Internal Revenue by Treasury Department Order Nos. 150–25 and 150–36, 26 CFR 301.7122–1 and 26 CFR 301.7701–9, and Treasury Department Order No. 150–60, is hereby delegated as follows:

1. Regional Commissioners of Internal Revenue are delegated authority, under section 7122 of the Internal Revenue Code, to accept offers in compromise in cases in which the unpaid liability (including any interest, penalty, additional amount or addition to tax) is $100,000 or more. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco and firearms taxes. This authority may not be redelegated.

2. For the Office of International Operations, the Assistant Commissioner (Compliance) is delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise of tax, based solely on doubt as to liability, in cases in which the unpaid liability (including any interest, penalty, additional amount or addition to tax) is $100,000 or more. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. This authority may not be redelegated.

3. For the Office of International Operations, the Director, Collection Division is delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise based on boubt as to collectibility and those based on doubt as to both collectibility and liability in cases in which the unpaid liability (including any interest, penalty, additional amount or addition to tax) is $100,000 or more. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, and firearms taxes. This authority may not be redelegated.

4. District Directors, Assistant District Directors, the Director of International Operations and the Assistant Director of International Operations, Regional Directors of Appeals, Chiefs and Associate Chiefs, Appeals Offices, are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise in cases in which the liability sought to be compromised (including any interest, penalty, additional amount or addition to tax) is less than $100,000, to accept offers involving specific penalties, and to reject offers in compromise regardless of the amount of the liability sought to be compromised. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. The authority delegated to District Directors, Assistant District Directors and the Director of International Operations may not be redelegated, except that that authority to reject offers in compromise may by redelegated, but not lower than to Division Chief. The District Director in a streamlined district may not redelegate this authority. The Regional Director of Appeals, Chiefs and Associate Chiefs, Appeals Offices, may not redelegate this authority.

5. Service Center Directors and Assistant Service Center Directors are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise, limited to penalties based solely on doubt as to liability, in cases in which the unpaid liability is less than $100,000, and to reject offers in compromise, limited to

penalties, regardless of the amount of the liability sought to be compromised. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco, and firearms taxes. This authority may be redelegated, but not lower than to Division Chief.

6. This Order supersedes Delegation Order No. 11 (Rev. 11) issued August 23, 1979.

William E. Williams,

Acting Commissioner.

[FR Doc. 80-20776 Filed 7-10-80; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES RAILWAY ASSOCIATION

[Docket 211-25]

Consolidated Rail Corp.; Application for a Loan

Subsection (h) of section 211 of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 721) (the Act), authorizes the United States Railway Association (Association) to enter into loan agreements with the Consolidated Rail Corporation (Conrail), the National Railroad Passenger Corporation, and any profitable railroad to which rail properties are transferred or conveyed pursuant to section 303(b)(1) of the Act under conditions and for purposes set forth in this Subsection. Subsection (b) of section 211 requires that the Association publish notice of the receipt of any application thereunder in the **Federal Register** and afford interested parties an opportunity to comment thereon.

Conrail submitted a Borrowing Application dated July 3, 1980 requesting new borrowings of $6,871,975.00. Conrail states that it will use the funds to pay the following obligations: (1) Of the Penn Central Transportation Company, nonemployee injury claims of $3,400,000.00, and (2) of the Erie Lackawanna Railway Company, claims of suppliers of goods and services of $622,030.00, claims of railroads of $2,550,000.00, and claims for nonemployee injuries of $299,945.00. The Borrowing Application includes the certification and exhibits required by the Loan Procedures.

Interested parties are invited to submit written comments relevant to this application. Any such submissions must identify by its Docket No., the application to which it relates, and must be filed with the Office of General Counsel, United States Railway Association, 955 L'Enfant Plaza North, S.W., Washington, D.C. 20595, on or before July 18, 1980, to enable timely consideration by USRA. The docket containing the original application shall be available for public inspection at that address Monday through Friday (holidays excepted) between 8:30 a.m. and 5:00 p.m.

Dated at Washington, D.C. this 7th day of July 1980.

David Kleyps,

Assistant Secretary, United States Railway Association.

[FR Doc. 80-20665 Filed 7-10-80; 8:45 am]

BILLING CODE 8240-01-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on July 31, 1980, at 1:00 PM, the Veterans Administration Medical and Regional Office Center, Cheyenne, Wyoming Station Committee on Educational Allowances shall at the hearing room, Building 4, Veterans Administration Medical and Regional Office Center, Cheyenne, Wyoming conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in National Outdoor Leadership School, Lander, Wyoming should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: July 3, 1980.

John D. Graveley,

Acting Director, Veterans Administration Medical and Regional Office Center

[FR Doc. 80-20658 Filed 7-10-80; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 135
Friday, July 11, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

[M-284, Amdt. 3, July 8, 1980]

CIVIL AERONAUTICS BOARD.

(Notice of deletions from the July 8, 1980 board meeting)

TIME AND DATE: 9:30 a.m., July 8, 1980.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

5. Docket 37021, Objection of ATC to the findings and conclusions of Show Cause Order 79-11-20 wherein the Board tenatively concluded that the provisions of previously approved agreements permitting non-member participation in the Area Settlement Plan that require removal of individual ticket stock may be adverse to the public interest and should be disapproved (memo No. 7750-F, BDA).

26. Docket 36280, Belize Airways Limited. Application for renewal of foreign air carrier permit (BIA, OGC, BALJ, BCP).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1334-80 Filed 7-9-80; 3:00 pm]

BILLING CODE 6320-01-M

2

[M-284, Amdt. 2; July 7, 1980]

CIVIL AERONAUTICS BOARD.

(Short Notice of Addition and Deletion of Items to the July 8, 1980 Board Meeting)

TIME AND DATE: 9:30 a.m., July 8, 1980.

PLACE: Room 1027 (open), 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

Addition: 11a. Dockets 38392 and 38401, Aspen Airways' notice and exemption request to terminate all service at Bakersfield, California, on July 13, 1980, before the end of the 90-day notice period (BDA).

Deletion: 27. Docket 30789, *Transatlantic Cargo Service Case*—Draft opinion and order on discretionary review (OGC).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

[S-1335-80 Filed 7-9-80; 3:01 pm]

BILLING CODE 6320-01-M

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, July 15, 1980.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Proposed rules to alter Exchange methods for imposing price limits.

Application of the New York Futures Exchange for designation as a contract market in Twenty-year Treasury Bonds and Ninety-day Treasury Bills.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-1327-80 Filed 7-9-80; 9:37 am]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., Tuesday, July 15, 1980.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters—proposed offer of settlement and proposed administrative complaint.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1328-80 Filed 7-9-80; 9:38 am]

BILLING CODE 6351-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION.

July 8, 1980.

TIME AND DATE: 10 a.m., July 9, 1980.

PLACE: Room 9306, 825 North Capital Street, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Disposition by the Agency of two particular cases of Formal Agency Adjudication.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; telephone (202) 357-8400.

The following members of the Commission voted that agency business required the holding of a closed meeting on less than the one week's notice required by the Government in the Sunshine Act:

Chairman Curtis.
Commissioner Sheldon.
Commissioner Holden.
Commissioner Hall.

Kenneth F. Plumb,

Secretary.

[S-1326-80 Filed 7-9-80; 9:00 am]

BILLING CODE 6450-85-M

6

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 45, FR p. 45754, July 7, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 am., July 9, 1980.

PLACE: 1700 G Street NW., amphitheater, second floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6677).

CHANGES IN THE MEETING: The following items have been added to the agenda for the open meeting:

Regulation on Increase in Number of Federal Home Loan Bank Directorships.

Regulation on Amendments Regarding Maximum Interest Rates and Penalty for Early Withdrawal.

Announcement is being made at the earliest practicable time.

No. 365, July 9, 1980.

[S-1329-80 Filed 7-9-80; 10:21 am]

BILLING CODE 6320-01-M

7

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., July 16, 1980.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Monthly Report of actions taken pursuant to authority delegated to the Managing Director.
2. Agreement No. 10178–1: Modification of the Gulf/North Europe Discussion Agreement—Application for two-year extension of term of approval.
3. Evaluation of Bunker Surcharge Program in domestic offshore trades.
4. Petition of Totem Ocean Trailer Express, Inc. concerning the status of certain joint through transportation between the contiguous United States and Alaska.
5. Award of interest in reparation proceedings.
6. Informal Docket No. 724(I): Cotton Import and Export Co. v. Sea-Land Service, Inc.—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary, (202) 523–5725.

[S–1336–80 Filed 7–9–80; 3:32 pm]

BILLING CODE 6730–01–M

8

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 2 p.m., July 14, 1980.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Internal Processing of matters for Commission consideration.
2. Docket No. 77–13: First International Development Corporation v. Ships Overseas Services, Inc.—Consideration of the record.
3. Docket No. 77–23: In the Matter of Agreement No. 10294—Consideration of the record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523–5725.

[S–1337–80 Filed 7–9–80; 3:33 pm]

BILLING CODE 6730–01–M

9

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, July 17, 1980.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Policy Review Session: Selected Procedural and Evidentiary Issues in Rulemaking.

CONTACT PERSON FOR MORE INFORMATION: Pamela F. Richard, Office of Public Information: (202) 523–3830; recorded message: (202) 523–3806.

[S–1333–80 Filed 7–9–80; 2:57 pm]

BILLING CODE 6750–01–M

10

NUCLEAR REGULATORY COMMISSION.

DATE: Tuesday, July 15, 1980.

PLACE: Commissioners Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

10 a.m.

1. Briefing on Analysis of Alternatives for Conducting Independent Verification Testing of Environmentally Qualified Equipment (approximately 2 hours, public meeting).

2 p.m.

1. Briefing on Mid-Year Review of Financial Plans and Programs (approximately 1½ hours, public meeting).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

Roger M. Tweed,

Office of the Secretary.

July 8, 1980.

[S–1331–80 Filed 7–9–80; 1:49 pm]

BILLING CODE 7590–01–M

11

POSTAL RATE COMMISSION.

TIME AND DATE: 8:15 a.m., Thursday, July 10, 1980.

PLACE: Conference room, room 500, 2000 L Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Consideration of Draft Order Taking Notice of the United States Postal Service's Failure to Comply with a Lawful Order of the Commission.

Closed pursuant to 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Dennis Watson, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268; telephone (202) 254–5614.

[S–1332–80 Filed 7–9–80; 2:26 pm]

BILLING CODE 7715–01–M

12

POSTAL SERVICE.

Board of Governors Notice of Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. § 552b), hereby gives notice that it intends to hold a meeting at 9:00 A.M. on Thursday, July 17, 1980, at Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. The meeting will be closed to the public. The Board expects to discuss the Postal Rate Commission's April 8, 1980, Recommended Decision upon Reconsideration of the Electronic Mail Classification Proposal, 1978 (Commission Docket No. MC78–3). This is the only item on the Agenda for this meeting. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245–4632.

On June 30, 1980, the Board of Governors voted to close the July 17 meeting to the public observation. Each of the members of the Board voted in favor of closing this meeting, which is expected to be attended by the following persons: Governors Wright, Hardesty, Allen, Camp, Ching and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Counsel to the Governors Califano; and Secretary of the Board Cox.

Louis A. Cox,

Secretary.

[S–1330–80 Filed 7–9–80; 11:23 am]

BILLING CODE 7710–12–M

federal register

Friday
July 11, 1980

Part II

Department of Labor

Mine Safety and Health Administration

Mine Rescue Teams; Minimum Requirements

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 49

Mine Rescue Teams

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This final rule requires the availability of mine rescue teams for all underground mines in the event of an emergency and is promulgated under the authority of sections 101 and 115(e) of the Federal Mine Safety and Health Act of 1977. The new standard establishes minimum requirements for mine rescue teams in the following areas: Team size and availability; rescue equipment, storage and maintenance; rescue notification plans; and team member experience, health, and training. The regulations also provide for alternative mine rescue capability for mines which are "small and remote" or those which have "special mining conditions."

EFFECTIVE DATE: These regulations shall be effective on July 11, 1981.

FOR FURTHER INFORMATION CONTACT: Frank Delimba, Chief, Division of Safety, Metal and Nonmetal Mine Safety and Health, Mine Safety and Health Administration, Room 717, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235–8646 or Herschel Potter, Chief, Division of Safety, Coal Mine Safety and Health, Mine Safety and Health Administration, Room 817, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, (703) 235–1284.

EFFECT ON EXISTING REGULATIONS: A new Part 49 is established by this rule which provides for the availability of mine rescue teams at all underground mines and sets forth minimum requirements for such teams. Presently, mine rescue regulations exist for metal and nonmetallic underground mines at 30 CFR 57.4–67, 57.4–69, and 57.4–70. To avoid duplication and inconsistency with this new rule, the existing regulations will be revoked upon the effective date of these regulations.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Mine Safety and Health Act of 1977 (Act), Pub. L. 91–173 as amended by Pub. L. 95–164, applies to all coal, metal and nonmetal mines. In section 115(e) of the Act Congress required that:

* * * the Secretary shall publish proposed regulations which shall provide that mine rescue teams shall be available for rescue and recovery work to each underground coal or other mine in the event of an emergency. The costs of making advance arrangements for such teams shall be borne by the operator of each such mine.

In compliance with Executive Order 12044 concerning improvement of government regulations and Department of Labor guidelines implementing the Executive Order (43 FR 22915), a draft of the proposed rule was made available for public comment prior to its publication in the Federal Register. Comments were received, given full consideration, and discussed in the proposed rule for mine rescue teams published (44 FR 1536, January 5, 1979) in accordance with section 101 of the Act, 30 U.S.C. 811. Interested persons were afforded 60 days to submit comments to the published proposed rule and to request a public hearing.

On May 22, 1979, MSHA published a Notice of Public Hearing which set forth the issues raised in response to the publication of the proposed rule, and identified the dates, time, and locations for six public hearings (44 FR 29692, May 22, 1979). During June and July of 1979, hearings were held in Charleston, West Virginia; Salt Lake City, Utah; Pittsburgh, Pennsylvania; Birmingham, Alabama; Pikeville, Kentucky; and St. Louis, Missouri. Transcripts of the proceedings were taken and made available for public inspection. Following the public hearings, interested persons were allowed until July 27, 1979, to submit supplementary statements or data. During this rulemaking process the Mine Safety and Health Administration (MSHA) has received and reviewed hundreds of written comments and statements from interested persons.

II. Discussion and Summary of the Final Rule

A. General Discussion

The legislative history for section 115(e) indicates that Congress considered the ready availability of a mine rescue capability in the event of an accident to be a vital protection to miners. Congress was concerned that, too often in the past, rescue efforts at a disaster site have had to await the delayed presence of a skilled but distant mine rescue team. In responding to the direction of Congress, the rulemaking process addressed, and the final rule reflects, the three essential elements of effective mine rescue by providing for: (1) The ready availability of teams to each underground mine; (2) requirements assuring that those teams be properly equipped; and (3) provisions establishing basic levels of skill and training for the team members.

MSHA's intent in promulgating this regulation has been to establish minimum requirements designed to assure that mine rescue teams shall be available for rescue and recovery work to each underground mine in the event of an emergency. MSHA recognizes that in many sectors of the mining industry rescue teams have been developed on a voluntary basis. This regulation is not intended to alter this traditional industry response. Based upon MSHA's experience in mine rescue matters, these regulations set forth only those requirements considered to be basic minimums. The history and tradition of mine rescue provides ample support for the expectation that many mines and teams will voluntarily exceed the minimum requirements of this regulation.

The thrust of a majority of the comments was for a more flexible final rule to better address the diversity of underground mining conditions, hazards, and operations. Many other comments suggested changes which were designed to simplify and clarify language of the proposed rule. In response, MSHA has made numerous changes to the standard as originally proposed to increase operator flexibility, simplify and clarify language, and delete unnecessary requirements.

MSHA has made a significant modification to the proposed rule in response to commenters who supported a provision to permit alternative mine rescue capability in limited instances. The MSHA notice of public hearing expressly solicited additional input on this issue (44 FR 29694, May 22, 1979). The final rule adds a new section (49.4) permitting alternative mine rescue capability for mines with "special mining conditions," while retaining the proposed rule section allowing alternative mine rescue capability for "small and remote mines". This new section for special mining conditions is based upon a recognition that certain underground mining operations present a significantly lower risk to the safety of underground miners. Operators who can establish the presence of the low-risk conditions are permitted to devise an alternative plan which assures a suitable rescue capability to that which would otherwise be required by the standard.

Other examples of flexibility are evident in the final rule's reduction of the length of recordkeeping periods for team training and physical examinations from two years to one, reduction of the required number of alternate team members from two to one; the waiver of the experience requirement and initial

training for individuals presently serving on a mine rescue team; and the enlargement of the pool of otherwise qualified individuals to serve on mine rescue teams through reduction of the underground experience requirements.

B. Section by Section Analysis of Final Rule

§ 49.1 Purpose and scope

This section explains that Part 49 implements the requirements of section 115(e) of the Federal Mine Safety and Health Act of 1977 (Act). Under section 115(e), Congress required that the Secretary publish regulations to provide for the availability of operator funded mine rescue teams for rescue and recovery work to each underground mine in the event of an emergency.

Commenters questioned whether the proposed regulations exceeded the legislative intent of section 115(e) of the Act that rescue teams be "available" by detailing minimum requirements for the size, training, equipment and health of the mine rescue teams.

All commenters recognized the inherently hazardous nature of mine rescue and recovery work and the need for professionalism in its performance. To assure effective and meaningful implementation of the statutory requirements, the regulation must establish minimum criteria so that those teams which present themselves in an emergency are fully capable of performing the rescue work. This goal is best achieved by requiring that the team members who are available in the event of an emergency be physically fit, properly trained, and appropriately equipped.

It should also be noted that the standards contained within Part 49 were also proposed pursuant to the Secretary's rulemaking and recordkeeping authority as provided for in sections 101, 103(h), and 508 of the Act. This authority allows the Secretary to promulgate improved mandatory health and safety standards for the protection of life and prevention of injuries in mines. Except for editorial changes designed to simplify and clarify, this section is promulgated as stated in the proposed rule.

§ 49.2 Availability of mine rescue teams

The proposed section provided that within six months after its effective date, or thereafter prior to the opening of any new mine, the operator of each underground mine have at least two mine rescue teams available at each underground mine for rescue and recovery work. This requirement could be satisfied through the use of a cooperative agreement or other contractual arrangement. The proposal also permitted operators of small and remote mines to submit alternative plans to MSHA as a means of achieving full compliance with the standard.

In the final rule, this section has been revised and reorganized. First, in direct response to the comments, MSHA has expanded the criteria for alternative compliance to include certain mines with "special mining conditions" as well as those considered "small and remote". These provisions for alternative compliance are contained in §§ 49.3 and 49.4 of the final rule. Section 49.2 as it appears in the final rule addresses the number of teams required, number of team members, experience requirements for team members (previously in § 49.6 of the proposal), and the definition of the term "available" as used in this standard. The effective date of the final rule is discussed in new § 49.10.

The purpose of these regulations is to assure that underground mine operators have properly trained and equipped personnel who are able to respond within a reasonable time in the event of an emergency. Commenters requested a definition of "available." To assure consistent application of the regulations, MSHA agrees that such a definition is necessary. Several commenters were concerned that this rule would result in a "fire department" approach to mine rescue work, requiring full time employees whose exclusive duties would be devoted to emergency readiness or other related activities. This is not MSHA's intention. In the final rule "available" has been defined to require that trained and equipped mine rescue teams be capable of presenting themselves at the mine site within a reasonable time after notification of an occurence which might require the services of a mine rescue team. This definition also provides that personnel will be considered available even though performing other regular work duties or in an off-duty capacity. Some comments expressed concern that the availability requirements in this rule would prevent teams from participating in mine rescue team contests or providing rescue services to another mine. Teams which are actually engaged in rescue operations cannot be expected to be "available" to perform rescue services elsewhere during those operations, and the availability requirement does not apply in such circumstances. In addition, in view of the important part that mine rescue contests play in the development of mine rescue skills and capabilities, mine rescue teams will not be required to be available while participating in these contests. However, mine operators should make every effort to assure that, during periods when regular mine rescue services are unavailable due to those circumstances, mine rescue capability can be provided as rapidly as possible in the event of an emergency. For example, it is recommended that MSHA District Manager be notified during such periods to assure expeditious coordination of mine rescue services should an emergency arise.

The final rule also provides that no mine served by a mine rescue team shall be located more than two hours ground travel time from the mine rescue station with which the rescue team is associated. This is a change from the proposed rule which limited the location of the rescue station to 60 minutes ground travel time from the mine(s) served by the rescue station. MSHA expanded the time associated with the location of a mine rescue station to account for differences in terrain.

Commenters stated that, with respect to the rescue team requirement for new mines, MSHA should clarify the meaning of the phrase "prior to the opening of a new mine." MSHA agrees that the phrase needed clarification. Accordingly, more explicit language has been used. The final rule requires a mine rescue capability for "all existing underground mines, upon initial excavation of a new underground mine entrance, or the re-opening of an existing mine". This means that such a capability will be necessary at currently operating underground mining operations, upon initial excavation of a shaft or slope mine and the first cut for a drift mine.

Comments also stated that during the construction phase of the mine, independent contractors, and not the owner, lessee or other person who would operate, control or supervise the mine, should be responsible for providing the mine rescue capability. On this issue, MSHA's position is that it is essential to maintain an effective continuity of rescue capability during the construction and early production phases of the mining operation. Therefore, the operator who is an owner, lessee, or other person who operates, controls or supervises a mine should be responsible for complying with the requirements of this rule. In many instances, the number of independent contractors at the mine during this period will be too numerous, and their duration too indefinite, to provide an effective continuous rescue capability.

Comments questioned the necessity in the proposed requirements for two separate rescue teams with each having two alternate members. On this subject, public comment varied greatly. Several comments agreed that two teams would provide adequate service, others stated that two teams were excessive, while still others stated that three teams would be appropriate. In addition, commenters took the position that one alternate member for each team would be sufficient. In an attempt to maximize operator flexibility, and to reconcile current industry practice and varying State law requirements, MSHA has retained the two-team requirement. However, the final rule is changed to require one alternate member per team. MSHA's experience has shown that the two-team concept has been historically effective and has offered reliable rescue capability. Commenters also suggested that one alternate per team would provide sufficient back-up protection for the rescue team. MSHA agrees and believes that changing the rule to require only one alternate per team will provide operators with more flexibility in forming teams without jeopardizing the assurance of adequate mine rescue services.

Comments stated that the use of contractual and cooperative agreements could result in legal difficulties which might hinder the effectiveness of a mine rescue organization. They stated that formal contractual agreements should not be required, suggesting instead the use of verbal agreements and/or declarations to assist. Other comments stated that operators need only provide evidence of the agreement, rather than the agreement itself. These commenters noted the tradition of voluntary mine rescue work and stated that, even in the event of a contractual or cooperative agreement, team members could not be compelled to respond to an emergency. In using the term contractual or cooperative agreements" in the proposed rule MSHA did not intend to create or imply a legal obligation or guarantee on the part of the organization providing rescue services to actually send team members underground in any particular situation. The agency also did not intend that any such agreements warranty that satisfactory results" be achieved once underground, or that persons be otherwise held accountable for specific conduct when in mine emergency situations. This concept is not changed in the final standard. The law and these regulations provide only that properly equipped and trained teams be available. Accordingly, MSHA seeks written evidence that an arrangement exists for mine rescue teams to appear at a mine during an emergency. Once the mine rescue teams are at the mine, these rules do not attempt to control the decisions that are made or the result achieved. Unless otherwise prescribed by the standard, the actual details of any arrangements such as logistics, cost or other matters are freely negotiable between the parties and need not necessarily be in writing. All operators who choose cooperative or other arrangements as a method of assuring rescue capability should do so with the full understanding of the voluntary nature of mine rescue work. The history of mining disasters reveals that if the lives of miners or other persons were threatened, mine rescue teams have always responded without hesitation. MSHA respects this tradition and expects that this type of response will continue.

Some commenters discussed the extent to which State teams could be used to help provide the mine rescue capability. They noted that in some instances, the State is only responsible for furnishing the equipment and training, while team members are actually employees of the mine operator. MSHA understands this, and to maximize the availability of mine rescue services, such arrangements will be permitted. Therefore, State teams can be used to satisfy the requirements of this rule, as long as such teams are trained and equipped according to the requirements of this rule.

With respect to the experience necessary for membership on a rescue team, the proposed rule contained a provision that all members and alternates shall have been employed in an underground mine for a total of at least one year within the three years prior to becoming a team member. In addition, surface miners who worked regularly underground would be considered employed in an underground mine. Commenters stated that these requirements were too restrictive, particularly for small mines and new mines. Specifically, operators of small mines stated that they would be unable to find sufficient personnel to meet the one year experience requirement. They noted that the limitation on experience to either underground work only or surface miners regularly working underground would preclude many qualified, specially skilled employees, such as electricians and hoist operators, from becoming team members. Therefore, although the final rule retains a requirement for one year of underground experience as a prerequisite to being eligible for mine rescue work, it has been changed so that the one year's experience requirement can be satisfied if it has occurred within the five years prior to becoming a team member. MSHA believes that this change will allow operators more flexibility in recruiting members, while at the same time assuring that only persons sufficiently familiar with underground work will serve on mine rescue teams.

The proposed provision allowing surface miners whose work regularly takes them underground to be considered qualified for team membership has been retained. This should enlarge the pool of potential mine rescue team members. With respect to the issue of surface miners qualifying for underground experience, some commenters urged MSHA to clarify that this would be solely for the purpose of determining eligibility for mine rescue teams. The final rule makes this clarifying change. With respect to the inability of small operators to recruit members, new § 49.3 allows operators of small and remote mines to submit plans for alternative compliance.

Many commenters stated that there should be a "grandfather clause" which would permit persons who are currently on mine rescue teams to be exempt from the one year experience requirement. MSHA agrees. The final rule has been changed to reflect a waiver of the one year underground experience requirement for miners who are on a rescue team on the effective date of this rule.

This section also requires that each operator of an underground mine shall provide MSHA with a statement describing the mine's method of compliance with this Part. The statement shall disclose whether the operator has independently provided mine rescue teams or entered into an agreement for the services of mine rescue teams. The name of the provider and the location of the services are to be included in the statement. A copy of the statement shall be posted at the mine for the miners' information. At mines where a miners' representative has been designated, the operator is also required to provide a copy of the statement to the miners' representative.

§ 49.3 Alternative mine rescue capability for small and remote mines.

Section 49.2(b) of the proposed rule provided that operators of small and remote mines could submit alternative plans for assuring a mine rescue capability. In the final rule, MSHA has expanded this provision and included it in a new section. The final rule also contains specific factors which will be

considered by MSHA District Managers in approving alternative plans for operators of small and remote mines.

The intent of this section of the final rule is to establish the best possible rescue response available under the circumstances which is appropriate to the underground mining conditions at each mine. Although small and remote mines are not statistically less hazardous than larger or non-remote mines, small and remote mines are distinguished by their size and location which may effectively limit the operator's ability to establish and equip two full mine rescue teams.

In the final rule, MSHA retained the alternative plan provision for small and remote mines because of a recognition that underground mines which are both small and remote face unique problems in providing for the availability of mine rescue teams. Some commenters stated that to increase flexibility in providing mine rescue capability, the term "small and remote" should be changed to "small and/or remote". According to these commenters, the presence of either characteristic should allow operators to establish an alternative plan. However, it is MSHA's opinion that smallness or remoteness alone should not be a sufficient criterion for permitting alternative rescue capability since such mines would be capable of establishing mine rescue teams. For example, small mines which are located close to either an established mine rescue team and station or to other underground mines could join in a cooperative arrangement to provide rescue services. In addition, remotely located mines which are not small are capable of establishing their own teams.

Many of the comments on the proposed rule urged MSHA to define the terms "small and remote." In the notice of public hearing, MSHA agreed that the terms needed defining and encouraged testimony on this issue (44 FR 29694). In defining the terms for the final rule, MSHA has determined that to be considered small and remote, the total underground employment of the operator's mine at any surrounding mine(s) within two hours ground travel time of the operator's mine must be less than 36. Under the definition, the number of miners employed on each shift in a multi-shift mine will be added together to derive at total.

The definition for the term "small and remote" applies only to this Part 49. These definitions are not intended to apply to or be a source of interpretational guidance where the terms "small" or "remote" appear in other sections of the Act, Code of Federal Regulations, or MSHA publications.

Comments relative to the number of miners employed at small and remote mines varied, ranging from mines employing as few as 20 persons underground to those employing as many as 75. In determining a specific underground employment figure for a small and remote mine, MSHA evaluated the record and found public testimony very helpful in delineating some of the difficulties which would be encountered by operators of small and remote mines in attempting to develop their own mine rescue teams. For example, based upon the comments and MSHA's own experience, in a typical small and remote mine, there will be a number of miners who: will not meet the experience and physical requirements in this rule; would not be amenable to volunteer rescue work; would be in administrative or management positions which may prevent them from serving on teams; or might have personal or family reasons which would preclude them from team membership. In addition, the mines within this category might be subject to high labor turnover and limited labor supply because of their isolated location or the nature of mining techniques being used. If any of these conditions are present, an already limited pool will be reduced. It is important to note that MSHA recognizes that these mine operators may have the same safety risk as large mines. In deciding on a definition for small and remote mines, MSHA felt that because of the administrative and other limitations which might be placed upon the applicant pool in these mines, it would be necessary to have a pool of at least three times the size of the 12 person general requirement from which to draw qualified members. MSHA believes that where the underground employment of the operator's mine and the underground employment of mines within two hours ground travel time of the operator's mine total less than 36, it could be very difficult to establish two, six-person teams.

A critical element in determining whether a mine is small and remote is the proximity of other underground mines or existing rescue teams and stations. MSHA solicited testimony on the remoteness issue. A commenter suggested that a mine which is located more than 100 miles from a mine with a mine rescue team or some other mine rescue capability should be considered remote. In using two hours ground travel time as the radius to determine remoteness, MSHA's definition is consistent with the comment. In instances where a small mine is found to be clustered within two hours ground travel time of other small mines, those mines will be able to jointly develop their own teams where their total underground employment equals or exceeds 36.

Where an operator has a mine which is unable to qualify for "small and remote," but because of unique circumstances can not meet the specific requirements of § 49.2 (availability of mine rescue teams), the MSHA District Manager should be notified immediately. The agency will then review the individual situation of the mine with the operator and a representative of the miners (if one has been designated). On a case by case basis, MSHA will seek to tailor appropriate remedies for such uniquely situated mines.

Some commenters raised an issue with respect to the role of MSHA teams in assisting operators to satisfy their obligations under this rule. Although MSHA does have personnel trained in mine rescue, their role is to provide support to MSHA at the scene of a mine emergency. This role is consistent with the language of section 103(j) of the Act, which allows the Secretary, in his discretion, to take appropriate action in the supervision and direction of rescue and recovery activities. This role for MSHA is also consistent with the express language of section 115(e), which requires that the operator bear the responsibility and costs for making advance arrangements to provide for mine rescue teams.

Underground mines which can qualify within the defined class as being both small and remote may submit an application for alternative mine rescue capability to the MSHA District Manager for the district in which the mine is located, for review and approval. No special form is required for submission of an application under this section.

The items of information required to be submitted in the application under this section are designed to disclose the particular characteristics of the small and remote mine seeking alternative compliance. With this information the operator of the underground mine, the miners, and MSHA can work together to formulate an appropriate rescue capability within the guidelines set forth in the section. Generally, this process will entail a look at the type of operation involved, an analysis as to the practicality and usefulness of taking intermediate steps to protect lives until fully trained and equipped teams can arrive, and an individual review to determine the best possible rescue

capability the applicant mine can develop.

The final rule requires several pieces of information from the applicant operator; each element is important to building an essential data base for the District Manager's evaluation of the operator's application for alternative compliance. The application is required to contain statements as to: the number of miners employed underground at the mine on each shift; the distances from the two nearest mine rescue stations; the total underground employment of mines within two hours ground travel time of the operator's mine; the mine's fire, ground, and roof control history; the mine's established escape and evacuation plan, an evaluation by the operator of the usefulness of additional refuge chambers to supplement those which may exist; the number of medically qualified and experienced miners willing to volunteer for mine rescue team service; the operator's alternative plan for assuring a suitable mine rescue capability; and other relevant information about the underground mine which may be requested by the District Manager.

Disclosure of the number of miners employed underground at the mine on each shift provides critical demographic information about the underground workforce. As the underground employment of the operator's mine and the underground employment of mines within two hours ground travel time of the operator's mine approaches 36, the operator's ability to develop an optimum rescue capability should improve.

The information on the distances from the two nearest mine rescue stations is required to identify the locations of the closest rescue stations. MSHA stands ready to assist operators in identifying mines and mine rescue teams and stations which are located near them. Paragraph (c)(4) requires inclusion of the mine's fire, ground, and roof control history in the application. MSHA is aware that 30 CFR Part 50, dealing with accidents, injuries, illnesses, employment and production in coal, metal, and nonmetallic mines, may already provide some of the information required in this section of the application. Duplication of effort is not intended. In satisfying this requirement, the operator may provide copies of accident reports relating to fire, explosion, and ground or roof control incidents at the mine. The operator may also summarize the findings of reports already filed. The intent is to review these aspects of the mine's history as part of the process of developing a suitable rescue capability.

The purpose of requiring the operator to submit an established escape and evacuation plan, with an evaluation of the usefulness of providing additonal refuge chambers, is to provide an opportunity to review whether possible improvements in these areas could enhance the chances of survival for miners until trained and equipped teams can arrive. MSHA recognizes that an escape and evacuation plan is already required under 30 CFR 57.11–53 and 75.1101–23. To avoid duplication, the applicant need only reference the date of the current plan where the District Manager is in possession of a current copy. Although escape and evacuation plans are reviewed under the regulations referred to above, this supplemental review of the plans may generate ideas for additional protection of miners trapped in small and remote mines until complete rescue services can arrive. MSHA is also aware that existing regulations for refuge chambers are contained in 30 CFR 57.11–50, 57.11–52, and 75.1500. The inclusion of this and other information in the application is not meant to suggest that changes will necessarily be mandated. The purpose is to allow a proper assessment of the individual circumstances of the small and remote mine, as was advocated by a considerable number of commenters.

The application also requires the operator to state the number of medically qualified and experienced miners at the mine who are willing to volunteer for mine rescue teams. In some instances the pool of qualified volunteers may be sufficient to establish one or two teams, or to establish teams with less than the full complement of members, which could perform rescue and recovery work until reserve assistance arrives.

Upon examining the particular characteristics of the underground mine, the operator is required to devise a suitable mine rescue capability. As stated earlier, the objective to be attained is the establishment of the best possible rescue capability available under the circumstances, which is also appropriate to the underground mining conditions at the applicant mine. MSHA stands ready to assist operators in this task. After a review of the submitted plan, the District Manager may request other relevant information about the operator's mine.

The completed application is to be posted at the mine. Where a miners' representative has been designated, the operator is also required to provide the representative with a copy of the application. Congress intended that miners be afforded a more active role in matters of direct concern to their safety and health, and their experience and knowledge of the mine make them an ideal resource in the development of the alternative mine rescue capability. In determining whether to approve the operator's alternative plan, the District Manager will consider comments submitted by, or on behalf of, any affected miner. In addition, the District Manager will evaluate the individual circumstances of the small and remote mine and make a determination as to whether the alternative mine rescue plan provides a suitable rescue capability in light of the information contained in the application.

The final rule requires the approved plan to be adopted by the operator and a copy of the plan posted at the mine for the miners' information. Where a miners' representative has been designated, the operator is also required to provide the representative with a copy of the approved plan. Appropriate MSHA mine emergency telephone numbers are to be included in each approved plan.

The operator has a duty under this provision to notify MSHA of material changes in the information submitted in the application. For example, if the underground workforce within the two hour ground travel time expands beyond the definition of small and remote, or if closer mine rescue teams become available, the operator's ability to provide a mine rescue capability will have materially changed. Paragraph (h) of this section provides that an approved plan for alternative mine rescue capability can be revoked by MSHA for cause, when it is determined that a condition or factor has changed which would materially alter the operator's mine rescue capability. No revocation of an approved plan will occur until after the operator has had an opportunity to be heard before the appropriate District Manager. Where an application is denied, or an approved plan is revoked, the District Manager will provide the reason for such action in writing to the operator. The operator may appeal the decision of the District Manager by writing to the Administrator for Coal Mine Safety and Health or Metal and Nonmetal Safety and Health, as appropriate.

§ 49.4 Alternative mine rescue capability for special mining conditions.

This is a new section. It provides that operators of mines with special conditions can submit alternative plans for assuring a mine rescue capability. This section also sets forth specific criteria which will be used by MSHA District Managers in approving such plans. The new section was added in

response to the great number of comments suggesting that the rule reflect greater flexibility to accommodate the diversity of underground mining conditions. Applications to provide alternative mine rescue capability from operators of mines with special mining conditions are to be submitted to the appropriate MSHA District Manager for review and approval. No special form is required for submission of an application under this section.

At the initial stage of the rulemaking process, comments to a draft of the proposed rule suggested that the criteria for an alternative plan should be expanded beyond the proposed rule's provision for small and remote underground mines. These comments were reflected in the proposed rule and MSHA specifically solicited comments on this issue in both the proposed rule and notice of hearings (44 FR 1536, January 5, 1979; 44 FR 29694, May 22, 1979). Many commenters stated that certain mining conditions and situations present a significantly lower risk of entrapment in an emergency to underground miners which would justify an alternative to the mine rescue team requirements contained in the proposed rule. To allow for maximum flexibility in the implementation of this rule for all segments of the mining industry, MSHA has included such a provision in the final rule.

Comment and testimony from the mining industry was widespread relative to the types of mining conditions and situations which might warrant alternative mine rescue capability. A history of mining disasters reveals that in most instances they are caused by mine fires or explosions. With this in mind, MSHA requires that operators demonstrate that certain conditions are present in the mine before alternative compliance can be considered under this section. Each of the conditions relate to factors tending to either: Reduce the likelihood of the occurrence of a hazard requiring the use of a mine rescue team; increase the likelihood that individuals will be able to effectuate self escape; or assure that conventional surface rescue services will be adequate. These conditions are also reflective of the differences in types of minerals being mined and the manner in which they are mined. Specifically, the mine must have (1) multiple adits or entries; (2) a noncombustible substance and nonexplosive atmosphere; (3) multiple vehicular openings to all active mine areas sufficient to allow fire or rescue vehicles full access to all parts of the mine in which miners work or travel; (4) roadways or other openings which are not supported or lined with combustible materials; (5) no history of flammable gas emission or accumulation, and the mined substance shall not have a history of flammable or toxic gas problems; (6) plugged any reported gas or oil well or exploratory drill hole to within 100 feet above and below the horizon of the ore body or seam.

If these conditions are present, the mine would generally be easily accessible and present a lower risk of the occurrence of a hazard related to gaseous substances, fires and explosions and to entrapment, poor ventilation, and roof falls. These conditions would also tend to facilitate self-escape. A survey of mines with these conditions reveals that the most common types of situations requiring emergency assistance are minor roof falls, equipment fires and vehicular accidents which can effectively be handled by conventional surface methods. MSHA believes that under these circumstances, alternative compliance might be justified.

Each application for alternative compliance under this section shall contain: A detailed explanation of the special mining conditions; the number of miners employed underground at the mine on each shift; the distances from the two nearest mine rescue stations; the operator's mine fire history; the operator's established escape and evacuation plan; the operator's alternative plan for assuring that a suitable mine rescue capability is provided at all times when miners are underground; and other relevant information about the underground mine which may be requested by the District Manager. With this information, the operator of the underground mine, the miners, and MSHA can work together to develop an appropriate rescue capability within the guidelines of this section.

It is important to note that mines which can qualify under this section can be distinguished from other underground mines in that they may present a significantly lower risk to miners of entrapment in an emergency. Although many commenters urged MSHA to include this provision for lower risk underground mines, they all agreed that even where special mining conditions exist, some rescue capability is needed to assure adequate protection for miners. In the notice of public hearing, MSHA solicited comment with respect to the alternative methods which would be used by operators of mines with special mining conditions to assure the availability of rescue services. Based upon the comments and MSHA's own experience, alternative methods of compliance might include the availability of: Local fire departments, rescue squads, ambulances, trained rescue personnel, or other rescue services. In addition, the operator is required to provide MSHA with the mine's escape and evacuation plan. However, to avoid duplication, operators who have filed current plans with MSHA (in accordance with 30 CFR 57.11–53 and 75.1101–23) need only cite the date the plan was submitted.

MSHA believes that this new provision is directly responsive to the comments stating that certain underground mining conditions do not require the type of mine rescue services set forth in § 49.2. MSHA believes that the approach adopted in this section will allow operators of mines with special mining conditions the flexibility needed to develop a rescue capability most appropriate for their mines, and at the same time, provide adequate rescue protection for workers in these mines.

New paragraph (e) of this section provides that a copy of the operator's application for alternative compliance must be posted at the mine and, where a miners' representative has been designated, provided to the representative. As mentioned in the discussion of small and remote mines, MSHA believes that because of the increased role granted miners in matters affecting their safety and health by the 1977 Act, they should be provided an opportunity to review the operator's application for alternative compliance. In making their decisions, MSHA District Managers would then be able to consider any pertinent information submitted by miners or their representatives. The District Manager's decision to approve an application will be based upon a evaluation of the data presented by the operator, the operator's proposed alternative plan, and other relevant information coming to the District Manager's attention. The District Manager will use this information to determine whether the alternative plan provides a suitable rescue capability which is appropriate to the individual characteristics of the mine and its workforce.

New paragraph (h) requires that an operator shall keep MSHA apprised of all changes related to information included in his application. Paragraph (i) provides that the appropriate MSHA District Manager may deny an application for alternative compliance under certain circumstances. This paragraph further provides for the

revocation of an approved plan if MSHA receives pertinent new information or determines that condition or factor has changed which would alter the operator's mine rescue capability. No revocation of an approved plan will occur until after the operator has had an opportunity to be heard before the appropriate District Manager. Where an application is denied, or an approved plan is revoked, the District Manager will provide the reason for such action in writing to the operator. The operator may appeal the decision of the District Manager by writing to the Administrator for Coal Mine Safety and Health or Metal and Nonmetal Safety and Health, as appropriate.

§ 49.5 Mine rescue station.

This section provides that each operator of an underground mine must designate in advance the location of the mine rescue station serving the underground mine, unless alternative mine rescue capability is permitted under §§ 49.3 or 49.4. In response to the comments, the final rule for this section reflects changes designed to allow greater flexibility in the concept of an acceptable mine rescue station.

Under the proposed rule a provision for a mine rescue station appeared in § 49.8. The proposed rule envisioned a facility which would be adequate in size to conduct classes, and be equipped with hot and cold running water, illumination, heating devices and telephone. The station was to be located not more than 60 minutes ground travel time from the mines served by it, although an exception existed for remotely located mines. The proposed rule also would have required that rescue stations be offset from mine openings to protect them from explosion, while a separate subsection asserted the Secretary's right to inspect the stations.

The final rule alters many of the provisions of the proposed rule, while retaining its basic concept. The primary purpose of the mine rescue station is to provide a safe and readily available place of storage for the equipment used by mine rescue teams in the event of an emergency. Under the final rule, equipment may be stored in a free standing mine rescue station, at the mine site, or at an affiliated mine. Any of these storage sites may be designated as the mine rescue station. The essential feature of the station is that it be a central repository for the storage of critical equipment which provides a proper storage environment. This concept is extremely important and necessary to avoid the possible delay and confusion which could result if equipment were to be stored in several different locations. In keeping with the primary purpose of a mine rescue station, MSHA agrees with the comments that the rescue station need not also be a classroom facility. MSHA also wishes to clarify that the final rule does not require that the rescue station be a facility which is staffed on a 24-hour-a-day basis.

The proposed rule contained requirements that the rescue station be provided with hot and cold running water, illumination, and heating devices; each utility serving a specific safety-related function: Water, to allow for equipment cleaning; illumination for visibility; and heating devices to protect the equipment from damage due to low temperatures. However, MSHA agrees with the comments stating that these utilities need not necessarily be present in rescue stations to achieve the goal of a proper storage environment for the ready use of emergency equipment. Cleaning, which may be necessary to keep equipment in good working order, need not be performed at the rescue station. Illumination, while necessary, may be provided from natural or mobile sources. Heating devices may not be needed in some climates. While conditions and climates will vary, it is important in all instances that the rescue equipment be appropriately protected and serviced. Flexibility in providing for a proper storage environment has been attained with the final rule's general requirement in § 49.6(b) (Equipment and maintenance) that mine rescue equipment be properly stored and maintained in a manner which will assure readiness for immediate use. Therefore, the mandatory inclusion of specific utilities has been deleted from the final rule. Proper storage and equipment readiness may require that mine rescue stations be offset from any mine openings where the risk of damage from explosion exists.

The purpose of the proposed rule's requirement for a telephone in the mine rescue station was to provide a means for notifying a mine rescue team of an emergency. This was deleted since the mine emergency notification plan (required under § 49.9 of the final rule) already covers this subject.

Finally, the proposed rule's express statement of the right of the Secretary's authorized representatives to inspect the designated mine rescue station is retained as part of the Secretary's general authority to inspect under section 103(a)(4) of the Federal Mine Safety and Health Act of 1977. Inspection is essential to properly evaluate compliance with this rule.

§ 49.6 Equipment and maintenance requirements.

Under the proposed rule, the required equipment for mine rescue teams and stations and the maintenance of that equipment were treated separately under §§ 49.3 and 49.4. In the final rule, these closely related subjects have been consolidated into one section.

The proposed rule provided that certain enumerated pieces of equipment were to be stored at a mine rescue station. Under the final rule the broadening of the definition of a mine rescue station allows equipment to be stored in a centralized location which may be at the mine site, mine rescue station, or at an affiliated mine. The purpose of this requirement is to assure that rescue efforts not be delayed as a result of equipment being stored in several different locations. The specific centralized location should be known to all who use it.

Under the final rule, certain paragraphs contained in proposed § 49.3 (equipment and maintenance) were retained completely, while other paragraphs were modified, reduced, or deleted. The proposed rule's requirements for at least six self-contained oxygen breathing apparatus per team with a minimum of two hours capacity each and equipment to test such apparatus were retained completely, and appear under § 49.6(a)(1) of the final rule. The proposed rule also required that each mine rescue station be equipped with either two oxygen indicators or two flame safety lamps, and with a portable mine rescue communication system. The final rule retains each of those equipment requirements. The vast majority of the commenters expressed agreement with MSHA as to the need for each of these items of rescue equipment.

Several modifications of equipment requirements were made in the final rule. The proposed rule provided that each mine rescue team be equipped with seven permissible cap lamps and a charging rack. The final rule requires six cap lamps to be consistent with the reduction in § 49.2(b) from two alternate rescue team members to one for each team. MSHA recognizes that cap lamps are already required under 30 CFR 57.17–10 and 30 CFR 75.1719–4. Duplication is not intended and the intent of retaining this requirement is to assure that a sufficient number of charged cap lamps are present to support a team arriving for an emergency. Where it can be demonstrated that the mines served by a rescue team already have the required

extra charged cap lamps, MSHA will not separately require additional cap lamps.

Sections § 49.3(b) (1) and (2) of the proposed rule set forth a specific list of required gas detectors. Commenters to these paragraphs felt that some types of underground mines would not need each of the specified detectors. MSHA agrees, and accordingly the final rule has been changed to provide in § 49.6(a)(6) that each mine or mine rescue station shall be equipped with two gas detectors which are appropriate for each type of gas which may be encountered at the mine(s) served. This modification allows greater flexibility to accommodate the diversity of underground mining conditions. The intention is to require gas detectors which are appropriate for the type and location of underground mine involved. Two factors would determine the "appropriate" detectors: one, gases commonly associated with the mined substance, such as methane in coal and salt mines; and two, gases that have been detected at a particular mine, even if that gas is not usually associated with the mined substance. Common experience will supply the answer in most instances. For example, all "gassy" mines need methane detectors, and all mines would require CO detectors as that gas would be present where any mine fire was involved.

Section 49.3(b)(4) of the proposed rule would have required an oxygen pump suitable to the type of breathing apparatus used by the rescue teams. Commenters submitted that a less costly "cascade system" could also be employed for recharging oxygen bottles in some instances. MSHA agrees that a cascade system is a feasible alternative to an oxygen pump where the pressure of the bottles to be charged does not exceed 2400 psi. The final rule permits cascading as an alternative where that method is compatible with the breathing apparatus used. Cascading is not considered to be a compatible alternative where it cannot fully re-charge the apparatus used; in those instances the oxygen pump will be required.

The proposed rule's provision for a portable supply of air or oxygen in § 49.3(b)(5) was retained with one minor modification and appears in § 49.6(a)(2) of the final rule. The modification clarifies that the portable supply may not only be of liquid air, liquid oxygen, or pressurized oxygen, but also may be a supply of O_2 generating or CO_2 absorbing chemicals. The supply must be sufficient to sustain each team for six hours while using the breathing apparatus during rescue operations.

Section 49.6(a)(9) of the final rule modifies the proposed rule by requiring only "necessary" spare parts and tools for repairing the breathing apparatus and communication system. Commenters expressed concern that the proposed rule's requirement for a "supply" of spare parts was too vague. Mine rescue teams may look to the manufacturer's recommendations as a guideline for determining the necessary spare parts and tools.

Section 49.3(a)(2) of the proposed rule would have required one extra oxygen bottle for each self-contained compressed oxygen breathing apparatus. MSHA agrees with the comments that it is unnecessary to require more than one extra fully charged oxygen bottle for each six apparatus. Other equipment requirements contained in this section adequately assure sufficient additional oxygen supplies and the units of the alternate team members are ample to provide adequate reserve protection should a malfunction occur. Accordingly, the final rule reduces this requirement to one extra fully charged oxygen bottle for every six self-contained breathing apparatus.

Several items of equipment contained in the proposed rule were deleted from the final rule. The proposed rule's requirement for self-rescuers was deleted since existing standards require the devices and because they are designed for evacuation use only, not entry. Similarly, the proposed rule's requirements for a stretcher, blanket, and first aid kit were deleted as they are presently covered under 30 CFR 57.15–1 and 30 CFR 75.1713–7. The proposed rule also set out a brief list of required team tools and marking accessories. The final rule deletes those items. It is expected that teams will exercise their best judgment with regard to the acquisition of individual tools and marking accessories considered as necessary and appropriate to the conduct of proper mine rescue operations.

The final rule deletes the proposed rule's requirement for a self-contained oxygen resuscitator. While the device is of value in certain situations, it could not be used in the contaminated atmosphere likely to exist in a mine rescue setting. However, when rescued personnel are brought to the fresh air base, oxygen resuscitating capability would be provided from sources already available, such as extra apparatus or the unused capacity of devices worn by rescue team members.

Section 49.3(c) of the proposed rule required operators to establish, in advance, a transportation plan to get the rescue teams to mines serviced. The final rule retains this requirement, but it has been transferred to § 49.2(d).

Section 49.4 of the proposed rule, dealing with the maintenance of mine rescue apparatus and equipment, was consolidated into § 49.6(b) of the final rule. This paragraph requires that the rescue apparatus and equipment be stored and maintained in a manner which assures readiness for immediate use. It also requires that a trained person inspect and test the equipment at least every 30 days and maintain a record of the inspection and testing dates. In order to avoid unnecessary and burdensome record keeping requirements MSHA has reduced the required record keeping time for this paragraph from two years to one.

§ 49.7 Physical requirements for mine rescue team.

This section requires physical examinations for mine rescue team members. Prospective members are to be examined within 60 days of starting initial training, while current team members are to receive an annual physical examination. The standard by which a physician is to evaluate a person's ability to serve on a mine rescue team is whether the person is physically fit to perform mine rescue and recovery work for polonged periods under strenuous conditions. The final rule provides that the certifying physical examination shall be recorded on MSHA form 5000–3, and kept on file at either the mine or mine rescue station. This form, which has been in use for some time as a voluntary submission, has been revised in accordance with the requirements of this section.

In a further effort to provide flexibility for operators, the final rule expands the time period for the initial examination from 30 to 60 days. It also will permit team members who require corrective eyeglasses to serve, provided the eyeglasses can be worn securely within an approved facepiece. Contact lenses will not be permitted, since there is evidence that they may become lodged above the eye due to pressure in the facepiece of approved breathing apparatus. This could be harmful to the wearer and also pose a hazard to other persons under emergency conditions.

Under the proposed rule certain enumerated medical conditions would have precluded an individual from serving as a team member. These conditions included: seizure disorder; perforated eardrum; hearing loss; high blood pressure; impaired vision; heart disease; hernia; major back surgery; absence of a limb or hand. Although the final rule retains all of the listed conditions except major back surgery,

the presence of any condition does not automatically disqualify a miner from team service. Major back surgery was deleted as a condition of consideration because of the wide variations in this condition, and the likelihood of complete rehabilitation. The final rule requires only that the examining physician consider the conditions in determining whether the individual is capable of performing mine rescue work. This change in the final rule reflects MSHA's agreement with the comments received that the ultimate decision for determining physical qualification for mine rescue team service should rest with the examining physician.

§ 49.8 Requirements for training of mine rescue teams; instructors, and records of training.

The proposed section provided minimum training requirements for team members and alternates, the methods for approving instructors, and recordkeeping requirements.

The purpose of this section is to assure that mine rescue teams will be properly trained in all phases of mine rescue work, including all conditions that might be encountered in the event of an actual emergency. Generally, commenters recognized and supported the need for training, but questioned MSHA's proposed method for attaining this need.

The most frequently raised criticism of this section was that the training requirements were excessive, duplicative of MSHA's Part 48 training regulations, and would result in unnecessary recordkeeping and paperwork. In addition, comments stated that the regulation should include a provision waiving the requirement for initial training for those individuals who currently are on rescue teams and hold MSHA or state certification in rescue training. Commenters also stated that the required hours would necessitate shift splitting and that only initial and refresher training was needed.

The final rule retains the initial training requirement but provides for a waiver of the requirement for those miners who are presently on a mine rescue team. Such persons would already be familiar with the use, care and maintenance of the selected breathing apparatus. Although comments questioned the amount of time required for the initial training, the 20 hours proposed by MSHA remains in the final rule. Based upon its experience in teaching the initial training course and reviewing existing course material, MSHA believes that this is the minimum amount of time in which new rescue team members can become sufficiently familiar with the use, care, and maintenance of selected mine rescue breathing apparatus. It should be noted that MSHA considers the specified amount of training to be minimum requirements; operators are free to provide more if they find it necessary.

The proposed requirement for a separate advance mine rescue training course has been deleted. However, the substance of such a course has been included as a part of the annual refresher training. Comments stated that MSHA's initial and advance mine rescue courses should be published to allow for adequate public input. At this time, MSHA is in the process of developing these courses, and when they are available, MSHA will solicit public input.

There were many comments related to the particular types of training required. Several commenters questioned the duration and frequency of the annual refresher training. In the final rule MSHA has modified the annual refresher training requirement to allow the operator more flexibility in determining both the types and schedule of training best suited for the team members. Commenters objected to the 10-hour separate course in the use, care, capabilities and limitations of auxiliary mine rescue equipment and stated that this training should be given as a part of the initial or advanced training. In support of their argument, they stated that the time required for this training would vary, due to differences in types and quantities of auxiliary equipment. MSHA agrees that this training can be integrated into other training and therefore, the 10-hour separate course for auxiliary equipment has been deleted. The operator can provide the amount of training which he deems sufficient as a part of the annual refresher training. In addition, it should be noted that training in the use, care, capabilities and limitations of auxiliary mine rescue equipment is only necessary if the mine rescue team uses auxiliary equipment. Some comments requested a definition of auxiliary equipment. "Auxiliary equipment," is defined in 30 CFR Part 11.3 as:

> a self-contained breathing apparatus, the use of which is limited in underground mine rescue and recovery operations to situations where the wearer has ready access to fresh air and at least one crew equipped with approved self-contained breathing apparatus of 2 hours or longer rating, is in reserve at a fresh-air base.

Therefore, self-contained breathing apparatus with a rating of one hour or less would come under this definition.

Although MSHA has not reduced the amount of refresher training required, the final rule does permit, as mentioned earlier, training in advanced mine rescue procedures to be given as a part of the annual refresher training, instead of as a separate course. MSHA believes that since the advanced training is of the "practice" type and deals more with procedures to be used once the team goes underground in an actual emergency, it will be more appropriate if given with the the refresher training. In addition, this will allow the operator greater flexibility in scheduling training and more opportunity to develop a program to meet its individual needs.

Commenters suggested that it was unnecessary to require training to be rotated among the mines served by the team, stating that this would be disruptive; and, in the case of a cooperative arrangement, team members providing assistance to another mine would be accompanied by one or more persons familiar with that mine. MSHA agrees and believes that it is only necessary that team members be familiar with underground mining conditions. Training and practice in one's own mine will satisfy this requirement; therefore, the rotation provision has been deleted from the final rule.

Commenters stated that it would be impractical to require that all team members be totally familiar with mine ventilation, escape routes and refuge chambers of the mines served by the rescue team. Instead, they suggested that mine map training and training in the basic principles of mine ventilation would be sufficient. These comments stated that normally, in the event of an actual emergency, there are persons on the team who do have total familiarity with escape routes and mine ventilation. In addition, in the event of an emergency at a mine which participates in a cooperative arrangement, there will be persons at that mine who are totally familiar with escape routes and mine ventilation. Because of this, MSHA believes that a general familiarity by team members with mine map reading and ventilation procedures will be sufficient to permit them to perform adequately in that portion of the mine to which they are assigned. The final rule has been changed to reflect this concept.

Commenters stated that the requirement for cardiopulmonary resuscitation training (CPR) should be eliminated, since it would be most difficult if not impossible in a mine rescue situation to administer CPR, and to do so could be hazardous to miners and the rescue team personnel. Other comments supported some form of CPR training; from total training but not

certification for all team members, to only requiring CPR for the team member who is going to be stationed at the fresh air base. MSHA recognizes the difficulties which could be associated with the use of CPR in a mine rescue situation. MSHA has decided that it is not appropriate to require CPR in these regulations at this time. This requirement has been deleted in the final rule. However, MSHA will continue to explore the important issue of how best to assure that adequate emergency medical services are available at mines.

An issue was raised concerning the requirement in the proposed rule for first aid training. Comments stated that it was duplicative of MSHA's training regulations (30 CFR Part 48), since this training is currently required for all underground miners under those regulations. MSHA agrees. MSHA believes any resulting problems in this area of training can best be addressed on a mine-by-mine basis. Therefore, the requirement for first aid training is deleted in the final rule.

Commenters stated that the proposed provision requiring that the Training Center Chief be notified of the schedule for training was overly restrictive. They stated that this would be administratively burdensome since it would be extremely difficult for operators to pinpoint exactly when training might be given. In support of this, they stated that such factors as team member absences due to vacations and illnesses, equipment malfunctions, production slow downs, and other daily problems would affect the scheduling of training. MSHA agrees that it is important to maintain a flexible approach to training in order that it might be offered at particularly appropriate times to be of maximum benefit. It is, therefore, unnecessary to submit the schedule on an ongoing basis. However, in order to permit training center personnel to monitor all training classes, the final rule states that operators must provide MSHA, upon request, the schedule of upcoming training sessions.

Commenters suggested that instructors should have underground experience, but not experience in actual mine rescue work. Others stated that both underground experience and experience in mine rescue operations are necessary. It is generally recognized that mine rescue work is extremely complex and dangerous and that much of the responsibility for training team members in the correct procedures to be used while undergoing rescue operations rests with the rescue instructors. MSHA believes that because mine rescue training is geared to the hazards encountered in underground mines, for maximum effectiveness, instructors should have a minimum of one year's underground experience within the past five years. However, MSHA realizes that there may be persons, who by virtue of their special skills and training, are qualified to teach in their respective fields of expertise even if they have had no experience in mine rescue work. Where instructors are designated by MSHA, this underground experience requirement may be waived. A commenter also suggested that there should be a provision allowing current mine rescue instructors to be grandfathered. MSHA agrees.

To maximize the use of mine rescue instructor resources and to best utilize specially skilled persons, MSHA does not believe that instructors need actual experience in mine rescue work. The final rule is changed to require instructors to have underground experience. The final rule permits instructors to be approved by one of three methods: (1) Complete a program of instruction by the Office of Education and Training, MSHA; (2) Be designated by the Office of Education and Training, MSHA, based upon their qualifications and teaching experience; or (3) Be designated by the Office of Education and Training, MSHA, if they had been approved instructors prior to the effective date of this rule and had taught courses within the 24 months prior to the effective date. The latter method allows for the grandfathering of current mine rescue instructors. The final rule also provides that the Chief of the Training Center may revoke an instructor's approval for good cause. Under the rule, instructors are entitled to a written statement of reasons for the intended revocation and an opportunity to appeal the decision of the Training Center Chief to the Director of Education and Training.

Commenters stated that the provision requiring that records of training be kept on file at the mine for two years was unnecessary and overly burdensome. They stated that the inspector would be able to check the records as a part of his annual inspections and that it was unnecessary to keep such records beyond a year. MSHA agrees and this requirement has been reduced to one year in the final rule.

§ 49.9 Emergency notification plan and mine map.

This section requires each mine to have a plan of procedures for notifying the mine rescue teams in the event of an emergency. The notification plan is to be located at the mine office and a copy of the plan posted at the mine for the miners' information. This section also requires that a current map of the underground mine be readily available at the mine.

Proposed rule provisions that the agreement for the services of the mine rescue teams be posted, and that the notification plan be set out on an MSHA supplied form have been deleted from the final rule. The posting of the notification plan, as distinguished from the agreement, provides the essential information for affected parties. MSHA has determined that a special form for disclosing the plan is not necessary.

The proposed rule's provisions that mine maps be posted at the mine rescue station and updated every six months or whenever significant changes occurred have also been deleted. MSHA has determined that the existing regulations requiring mine maps, as found in 30 CFR 57.11–53 and 30 CFR 75.1200, are sufficient to satisfy the needs of rescue teams arriving at a mine in the event of an emergency.

§ 49.10 Effective date.

All provisions and requirements of this Part shall become effective on July 11, 1981. The proposed rule provided for a six month delayed effective date; however, comments stated that this was not enough time to allow operators or purchase necessary equipment, train team members and make necessary cooperative or other arrangements.

MSHA has conducted a preliminary survey of equipment manufacturers and has been informed that it will take approximately one year to manufacture enough equipment to satisfy the requirements of the rule. In addition, comments stated that it would be very difficult, in many instances, to recruit and train members for rescue teams within the six month time frame. Therefore, in response to public comment and the agency's own investigation, MSHA has included a delayed effective date of one year in the final rule. This will provide operators with sufficient time to comply with all of the requirements of the standard.

At the time of the effective date of these regulations, operators of underground mines will be required to have developed and have in place the rescue capability required under this Part 49. Team members are to be equipped and have completed the initial training course. Operators applying for alternative mine rescue capability under §§ 49.3 and 49.4 must have their plans approved and rescue capability in place and operational by the effective date of this rule.

In the Notice of Public Hearing, MSHA solicited comments as to potential duplication or inconsistency of regulatory requirements, created by this Part 49 and existing metal and nonmetal mine rescue standards. After reviewing these standards MSHA has determined that the metal and nonmetal mine rescue standards at 30 CFR 57.4–67, 57.4–69, and 57.4–70 are to be revoked effective on July 11, 1981.

Drafting Information

The principal persons responsible for preparing this final rule are: Patricia W. Silvey, Office of Standards, Regulations and Variances, Mine Safety and Health Administration; and William B. Moran, Division of Mine Safety and Health, Office of the Solicitor, Department of Labor.

Regulatory Analysis

It has been determined that a regulatory analysis is not required for this rule under the Department of Labor's final guidelines for implementing Executive Order 12044 (44 FR 5570, January 26, 1979). It is estimated that the first year costs for compliance with this rule will be approximately $38.1 million. This amount is based upon a projected need of approximately 800 additional mine rescue teams and 350 additional mine rescue stations in the coal industry and 90 additional teams and 50 additional stations in the metal and nonmetal industry, at a cost of approximately $28,500 per team and $16,000 per station. MSHA has reduced the costs which were associated with mine rescue stations in the proposed rule, since the final rule expands the definition of a mine rescue station to include less costly options. MSHA anticipates that operators will utilize those options for about half of the additional stations required. The total includes an estimated $300,000 for administrative and recordkeeping costs, and $6 million for costs related to alternative compliance. MSHA projects that the recurring costs of compliance will be approximately $6.5 million annually, since many of the first year costs represent one time capital outlays. MSHA has prepared an economic analysis of the requirements of this rule, with a full discussion of costs associated with each major acceptable alternative, which is available upon request.

Dated: July 3, 1980.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

1. A new Part 49 is added to Subchapter H, Chapter I Title 30, Code of Federal Regulations, as set forth below:

PART 49—MINE RESCUE TEAMS

Sec.

Authority: Sec. 101, 103(h), 115(e) and 508 of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91–173, as amended by Pub. L. 95–164).

§ 49.1 Purpose and scope.

This Part implements the provisions of Section 115(e) of the Federal Mine Safety and Health Act of 1977. Every operator of an underground mine shall assure the availability of mine rescue capability for purposes of emergency rescue and recovery.

§ 49.2 Availability of mine rescue teams.

(a) Except where alternative compliance is permitted for small and remote mines (§ 49.3) or those mines operating under special mining conditions (§ 49.4), every operator of an underground mine shall:

(1) Establish at least two mine rescue teams which are available at all times when miners are underground; or

(2) Enter into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(b) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained, and equipped for providing emergency mine rescue service.

(c) To be considered for membership on a mine rescue team, each person must have been employed in an underground mine for a minimum of one year within the past five years. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground shall meet the experience requirement. The underground experience requirement is waived for those miners on a mine rescue team on the effective date of this rule.

(d) Each operator shall arrange, in advance, ground transportation for rescue teams and equipment to the mine or mines served.

(e) Upon the effective date of this Part, the required rescue capability shall be present at all existing underground mines, upon initial excavation of a new underground mine entrance, or the re-opening of an existing underground mine.

(f) Except where alternative compliance is permitted under § 49.3 or § 49.4, no mine served by a mine rescue team shall be located more than two hours ground travel time from the mine rescue station with which the rescue team is associated.

(g) As used in this part, mine rescue teams shall be considered available where teams are capable presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or in an off-duty capacity. The requirement that mine rescue teams be available shall not apply when teams are participating in mine rescue contests or providing services to another mine.

(h) Each operator of an underground mine who provides rescue teams under this section shall send the District Manager a statement describing the mine's method of compliance with this part. The statement shall disclose whether the operator has independently provided mine rescue teams or entered into an agreement for the services of mine rescue teams. The name of the provider and the location of the services shall be included in the statement. A copy of the statement shall be posted at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the statement.

§ 49.3 Alternative mine rescue capability for small and remote mines.

(a) If an underground mine is small and remote, an operator may provide for an alternative mine rescue capability. For the purposes of this part only, consideration for small and remote shall be given where the total underground employment of the operator's mine and any surrounding mine(s) within two hours ground travel time of the operator's mine is less than 36.

(b) An application for alternative mine rescue capability shall be submitted to the District Manager for the district in

which the mine is located for review and approval.

(c) Each application for an alternative mine rescue capability shall contain:

(1) The number of miners employed underground at the mine on each shift;

(2) The distances from the two nearest mine rescue stations;

(3) The total underground employment of mines within two hours ground travel time of the operator's mine;

(4) The operator's mine fire, ground, and roof control history;

(5) The operator's established escape and evacuation plan;

(6) A statement by the operator evaluating the usefulness of additional refuge chambers to supplement those which may exist;

(7) A statement by the operator as to the number of miners willing to serve on a mine rescue team;

(8) The operator's alternative plan for assuring that a suitable mine rescue capability is provided at all times when miners are underground; and

(9) Other relevant information about the operator's mine which may be requested by the District Manager.

(d) A copy of the operator's application shall be posted at the mine. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the application.

(e) In determining whether to approve an application for alternative compliance, the District Manager shall consider:

(1) The individual circumstances of the small and remote mine;

(2) Comments submitted by, or on behalf of, any affected miner; and

(3) Whether the alternative mine rescue plan provides a suitable rescue capability at the operator's mine.

(f) Where alternative compliance is approved by MSHA, the operator shall adopt the alternative plan and post a copy of the approved plan (with appropriate MSHA mine emergency telephone numbers) at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the approved plan.

(g) The operator shall notify the District Manager of any changed condition or factor materially affecting information submitted in the application for alternative mine rescue capability.

(h) (1) An approved plan for alternative mine rescue capability shall be subject to revocation or modification for cause by MSHA, where it is determined that a condition or factor has changed which would materially alter the operator's mine rescue capability. If such action is contemplated, the operator will be notified, and given an opportunity to be heard before the appropriate District Manager.

(2) If an application for alternative compliance is denied or revoked, the District Manager shall provide the reason for such denial or revocation in writing to the operator. The operator may appeal this decision in writing to the Administrator for Coal Mine Safety and Health or the Administrator for Metal and Nonmetal Mine Safety and Health, as appropriate, 4015 Wilson Boulevard, Arlington, Virginia 22203.

§ 49.4 Alternative mine rescue capability for special mining conditions.

(a) If an underground mine is operating under special mining conditions, the operator may provide an alternative mine rescue capability.

(b) An application for alternative mine rescue capability shall be submitted to the District Manager for the district in which the mine is located for review and approval.

(c) To be considered "operating under special mining conditions," the operator must show that all of the following conditions are present:

(1) The mine has multiple adits or entries;

(2) The mined substance is noncombustible and the mining atmosphere nonexplosive;

(3) There are multiple vehicular openings to all active mine areas, sufficient to allow fire and rescue vehicles full access to all parts of the mine in which miners work or travel;

(4) Roadways or other openings are not supported or lined with combustible materials;

(5) The mine shall not have a history of flammable-gas emission or accumulation, and the mined substance shall not have a history associated with flammable or toxic gas problems; and

(6) Any reported gas or oil well or exploratory drill hole shall be plugged to within 100 feet above and below the horizon of the ore body or seam.

(d) Each application shall contain:

(1) An explanation of the special mining conditions;

(2) The number of miners employed underground at the mine on each shift;

(3) The distances from the two nearest mine rescue stations;

(4) The operator's mine fire history;

(5) The operator's established escape and evacuation plan;

(6) The operator's alternative plan for assuring that a suitable mine rescue capability is provided at all times when miners are underground; and

(7) Other relevant information about the operator's mine which may be requested by the District Manager.

(e) A copy of the operator's application shall be posted at the mine. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the application.

(f) In determining whether to approve an application for alternative compliance, the District Manager shall consider:

(1) The individual circumstances of the mine operating under special mining conditions;

(2) Comments submitted by, or on behalf of, any affected miner; and

(3) Whether the alternative mine rescue plan provides a suitable rescue capability at the operator's mine.

(g) Where alternative compliance is approved by MSHA the operator shall adopt the alternative plan and post a copy of the approved plan (with appropriate MSHA mine emergency telephone numbers) at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the alternative plan.

(h) The operator shall notify the District Manager of any changed condition or factor materially affecting information submitted in the application for alternative mine rescue capability.

(i) (1) An approved plan for alternative mine rescue capability shall be subject be to revocation or modification by MSHA, where it is determined that a condition or factor has changed which would materially alter the operator's mine rescue capability. If such action is contemplated, the operator will be notified and given an opportunity to be heard before the appropriate District Manager.

(2) If an application for alternative compliance is denied or revoked, the District Manager shall provide the reason for such denial or revocation in writing to the operator. The operator may appeal this decision in writing to the Administrator for Coal Mine Safety and Health or the Administrator for Metal and Nonmetal Mine Safety and Health, as appropriate, 4015 Wilson Boulevard, Arlington, Virginia 22203.

§ 49.5 Mine rescue station.

(a) Except where alternative compliance is permitted, every operator of an underground mine shall designate, in advance, the location of the mine rescue station serving the mine.

(b) Mine rescue stations are to provide a centralized storage location

for rescue equipment. This centralized storage location may be either at the mine site, affiliated mines, or a separate mine rescue structure.

(c) Mine rescue stations shall provide a proper storage environment to assure equipment readiness for immediate use.

(d) Authorized representatives of the Secretary shall have the right of entry to inspect any designated mine rescue station.

§ 49.6 Equipment and maintenance requirements.

(a) Each mine rescue station shall be provided with at least the following equipment:

(1) Twelve self-contained oxygen breathing apparatus, each with a minimum of 2 hours capacity (approved under Subpart H of Part 11 of this title), and any necessary equipment for testing such breathing apparatus;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbant chemicals, as applicable to the supplied breathing apparatus and sufficient to sustain each team for six hours while using the breathing apparatus during rescue operations;

(3) One extra oxygen bottle (fully charged) for every six self-contained compressed oxygen breathing apparatus;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatus;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators or two flame safety lamps;

(8) One portable mine rescue communication system (approved under Part 23 of this title) or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. These communication systems shall be at least 1,000 feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatus and communication system.

(b) Mine rescue apparatus and equipment shall be maintained in a manner which will assure readiness for immediate use. A person trained in the use and care of breathing apparatus shall inspect and test the apparatus at intervals not exceeding 30 days. A record of inspections and tests shall be maintained at the mine rescue station for a period of one year.

§ 49.7 Physical requirements for mine rescue team.

(a) Each member of a mine rescue team shall be examined annually by a physician who shall certify that each person is physically fit to perform mine rescue and recovery work for prolonged periods under strenuous conditions. The first such physical examination shall be completed within 60 days prior to scheduled initial training. A team member requiring corrective eyeglasses will not be disqualified provided the eyeglasses can be worn securely within an approved facepiece.

(b) In determining whether a miner is physically capable of performing mine rescue duties, the physician shall take the following conditions into consideration:

(1) Seizure disorder;

(2) Perforated eardrum;

(3) Hearing loss without a hearing aid greater than 40 decibels at 400, 1,000 and 2,000 Hz;

(4) Repeated blood pressure (controlled or uncontrolled by medication) reading which exceeds 160 systolic, or 100 diastolic, or which is less than 105 systolic, or 60 diastolic;

(5) Distant visual acuity (without glasses) less than 20/50 Snellen scale in one eye, and 20/70 in the other;

(6) Heart disease;

(7) Hernia;

(8) Absence of a limb or hand; or

(9) Any other condition which the examining physician determines is relevant to the question of whether the miner is fit for rescue team service.

(c) The operator shall have MSHA Form 5000–3 certifying medical fitness completed and signed by the examining physician for each member of a mine rescue team. These forms shall be kept on file at the mine rescue station for a period of one year.

§ 49.8 Training for mine rescue teams.

(a) Prior to serving on a mine rescue team each member shall complete, at a minimum, an initial 20-hour course of instruction as prescribed by MSHA's Office of Education and Training, in the use, care, and maintenance of the type of breathing apparatus which will be used by the mine rescue team. The initial training requirement is waived for those miners on a mine rescue team on the effective date of this rule.

(b) Upon completion of the initial training, all team members shall receive at least 40 hours of refresher training annually. This training shall be given at least 4 hours each month, or for a period of 8 hours every two months. This training shall include:

(1) Sessions underground at least once each 6 months;

(2) The wearing and use of the breathing apparatus by team members for a period of at least two hours while under oxygen every two months;

(3) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus;

(4) Advanced mine rescue training and procedures; as prescribed by MSHA's Office of Education and Training and;

(5) Mine map training and ventilation procedures.

(c) A mine rescue team member will be ineligible to serve on a team if more than 8 hours of training is missed during one year, unless additional training is received to make up for the time missed.

(d) The training courses required by this section shall be conducted by instructors who have been employed in an underground mine for a minimum of one year within the past five years, and who have received MSHA approval through:

(1) Completion of an MSHA or State approved instructor's training course and the program of instruction in the subject matter to be taught.

(2) Designation by the Office of Education and Training as approved instructors to teach specific courses, based on their qualifications and teaching experience. Previously approved instructors need not be re-designated to teach the approved courses as long as they have taught those courses within the 24 months prior to the effective date of this part. Where individuals are designated, the Office of Education and Training may waive the underground experience requirement.

(e) The Chief of the Training Center may revoke an instructor's approval for good cause. A written statement revoking the approval together with reasons for revocation shall be provided the instructor. The affected instructor may appeal the decision of the Training Center Chief by writing to the Director of Education and Training, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203. The Director of Education and Training shall issue a decision on the appeal.

(f) Upon request from the Office of Education and Training, MSHA, the operator shall provide information concerning the schedule of upcoming training.

(g) A record of training of each team member shall be on file at the mine rescue station for a period of one year.

§ 49.9 Mine emergency notification plan.

(a) Each underground mine shall have a mine rescue notification plan outlining the procedures to follow in notifying the

mine rescue teams when there is an emergency that requires their services.

(b) A copy of the mine rescue notification plan shall be posted at the mine for the miners' information. Where a miners' representative has been designated, the operator shall also provide the representative with a copy of the plan.

§ 49.10 Effective date.

All provisions and requirements of this part shall become effective on July 11, 1981.

§§ 57.4–67, 57.4–59, 57.4–70 [Revoked]

2. Revocation of existing standards. Effective July 11, 1981, existing metal and nonmetal underground standards at 30 CFR 57.4–67, 57.4–59 and 57.4–70 are revoked.

[FR Doc. 80–20517 Filed 7–10–80; 8:45 am]

BILLING CODE 4510–43–M

federal register

Friday
July 11, 1980

Part III

Environmental Protection Agency

Toxic Substances Control; Records and Reports of Allegations of Significant Adverse Reactions to Health or the Environment

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 717

[FRL 1483-4]

Toxic Substances Control Act; Records and Reports of Allegations of Significant Adverse Reactions to Health or the Environment

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Section 8(c) of the Toxic Substances Control Act requires that "any person who manufactures, processes, or distributes in commerce any chemical substance or mixture" must keep "records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture." Section 8(c) requires that employee allegations be kept for 30 years, and all other allegations be kept for five years. This proposal sets out definitions and procedures for implementing section 8(c).

Note.—Persons who "process" chemical substances or mixtures include companies that manufacture consumer goods or industrial products. Manufacturers of automobiles, paper products, textiles, or electronic components, for example, should consider commenting on this proposed rule.

DATES: In order for EPA to consider comments during development of the final rule, it must receive written comments on this proposal on or before October 9, 1980 (see *Public Meetings* below for a discussion of meeting arrangements.)

ADDRESS: Written comments should bear the document control number OTS-083001 and should be submitted to the Chemical Information Division, Office of Pesticides and Toxic Substances (TS-793), Attention: Document Control Officer, Environmental Protection Agency, Washington, DC 20460. All written comments concerning this notice will be available for public inspection at the OPTS Reading Room, 447 East Tower, from 9:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Director, Industry Assistance Office, Office of Pesticides and Toxic Substances (TS-799), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 800-424-9065; in Washington call 554-1404.

SUPPLEMENTARY INFORMATION: This proposed rule to implement section 8(c) of the Toxic Substances Control Act, 15 U.S.C. 2607(c), would apply to all persons who manufacture or process chemical substances or mixtures, and to all distributors except retailers. These persons would be required to keep records of allegations of "significant" adverse reactions. These are defined as reactions that suggest that a chemical may cause long-lasting or irreversible damage to health or the environment. In the proposal, records of written and oral allegations that are not anonymous and that implicate a chemical substance or mixture would have to be kept at the plant site where they are received. For reporting purposes, companies would have to transfer data from allegation records to a standard EPA form. The proposal discusses options for automatic reporting of certain allegations to EPA. The proposal also contains a provision under which EPA will require firms to submit records at the specific request of EPA.

EPA has worked closely with the Occupational Safety and Health Administration and the Consumer Product Safety Commission during the development of this proposal. The Agencies intend to share information about workers and consumers that results from this requirement.

Purpose and Scope

Section 8(c) of the Toxic Substances Control Act requires that persons who manufacture, process, or distribute chemical substances or mixtures record allegations of significant adverse reactions to such chemical substances or mixtures. The section also requires that such records be submitted upon the request of the Administrator or his duly designated representatives. This proposed rule implements these requirements. The rule proposes a system of recordkeeping and reporting which would serve the following purposes:

(a) It would establish an invaluable historical record of allegations of significant adverse reactions and related information which EPA can examine whenever a chemical is discovered to present possible risks to human health or the environment; and

(b) It would provide a means to reveal patterns of adverse effects which might otherwise either not be noticed or go undetected for long periods of time, and to identify previously unknown chemical hazards.

Definitions

Section 8(c) does not make recordkeeping contingent upon evaluating or verifying an allegation. In the proposed rule, the Agency has defined an allegation in part as a "statement made without formal proof or regard for evidence." This lack of need for supporting information is one factor that distinguishes section 8(c) from section 8(e) of TSCA (substantial risk notification). Section 8(e) states that persons must immediately inform the Administrator if they have information that reasonably supports the conclusion that a chemical substance poses a substantial risk of injury to health or the environment. A report of substantial risk of injury, unlike an allegation of a significant adverse reaction, is accompanied by information which reasonably supports the seriousness of the effect or the probability of its occurrence (see 43 FR 11110 *et seq.*, March 16, 1978). However, the Agency recognizes that an allegation (or allegations) recorded under section 8(c) could result in a notification of substantial risk filed under section 8(e) if a firm obtains additional information that meets the higher standards of section 8(e). If this happens, and a firm files a section 8(e) report, the Agency would not require the firm to separately report to the Agency under section 8(c) (see discussion under Reporting Requirements). However, the opposite is not true: complying with section 8(c) requirements does not relieve a firm of any responsibilities under section 8(e).

For the purposes of this rule only, "significant adverse reactions to health or the environment" are those which indicate the possibility of long-lasting or irreversible damage to health or the environment. We have included descriptions of effects to illustrate what we mean by "significant." Specifically, we intend to exclude one-time effects, such as those resulting from an accidental poisoning or an accidental spill of a caustic chemical onto the skin. This exclusion is proposed because we believe that recordkeeping under section 8(c) is important for health effects whose implications may not be fully apparent at the time of their occurrence. In addition, the Occupational Safety and Health Administration recordkeeping requirements for work-related injuries and illnesses cover serious effects of the kind that we propose to exclude (see 29 CFR Part 104).

This proposed rule does not attempt to enumerate all of the specific effects and circumstances which may constitute a significant adverse reaction. Rather, we have measured significance in terms of when the adverse reaction occurs in relation to exposure to a substance, and how long the effects last. Health effects that last only for the duration of the exposure should be recorded only if they occur repeatedly. This means that

nausea or headaches may be significant adverse effects if they are experienced repeatedly by a person upon exposure to the substance. Effects that persist beyond the period of exposure (such as kidney dysfunction or sterility) are reactions that should be recorded, even if alleged only once.

We have broadly defined adverse environmental reactions that should be recorded. Generally, adverse environmental effects may be indicated by gradual or sudden changes in the composition of plant or animal life in an area. Such adverse changes in the composition of life could be indicated by abnormal numbers of animal or plant deaths; a decline in the vigor or reproductive success of a species; a reduction in either crop or livestock agricultural productivity; or alterations in the behavior of a species.

The Agency requests comments on the appropriateness of these proposed criteria. Also, we invite persons wishing clarification of what constitutes a recordable allegation to include in their comments either real or hypothetical examples for interpretation. In the preamble to the final rule, we will address typical examples submitted in response to this proposal and use them to clarify the definition.

Persons Subject to This Part

This proposal would apply to all persons who manufacture or process chemical substances or mixtures, and to all distributors of chemical substances and mixtures except retailers. The term "manufacture" is defined in TSCA to include manufacture, import, and production. The term "process" is defined in TSCA to mean preparation of a chemical substance or mixture for distribution in commerce (a) in the same or different form or physical state from that in which it was received, or (b) as part of an article. Thus, persons who ordinarily consider themselves to be "users" because all that they do is incorporate a chemical into an article, are "processors" under TSCA. Retailers are firms that sell a final product to ultimate purchasers who are not commercial entities. The definitions of "manufacture for commercial purposes" and "process for commercial purposes" are discussed in greater detail in the preamble of the proposed TSCA section 8(d) rule "Health and Safety Data Reporting", published December 31, 1979, in the Federal Register (44 FR 77470).

Retail distributors are the only small businesses that the Agency proposes to exempt from the present rule. Retailers are excluded because the potential for retail employees being exposed is limited since they handle packaged products. In addition, it appears that allegations from employers or consumers regarding brand name products are, as a general practice, sent by retailers to the manufacturer or processor, because it is in the retailers' interest to report to their suppliers any customer problems resulting from the use of products (see item 2 of the record described at the end of this preamble). The supplier will be a manufacturer, processor, or distributor who is subject to this rule. Hence, manufacturers', processors', and distributors' records would be generally more comprehensive, and should be sufficient for the purposes of this rule. In addition, retailers are so numerous and include so many small firms that we will consider including them in this rule only if it appears that exempting them will substantially reduce the effectiveness of this rule. The Agency solicits comments on whether retailers or other small businesses should be exempt from the requirements of this rule. If the comments make it clear that including retailers will make the rule substantially more effective and the greater effectiveness is justified when weighed against the burden that would be imposed, then retailers will be included in the rule as promulgated.

Allegations Which Must Be Kept

The proposed rule would require companies to keep records of written *and* oral allegations so long as the allegations are not anonymous, and so long as they are made to an appropriate company official, e.g., a supervisor, a company physician or health unit staff member, a company agent, or a public relations officer. The Agency believes that oral allegations should be written down, since many people are more likely to submit allegations by telephone than in writing.

This proposed rule does not limit the recording of allegations to those which describe a chemical substance by exact name. The Agency believes that requiring an exact name would be too restrictive because there will be instances when employees, plant neighbors, or consumers (or the firm itself) will not be able to name a specific chemical—either because their knowledge of chemistry is limited or because they have encountered more than one chemical and cannot pinpoint only one chemical as the cause. The proposed rule requires firms to keep not only allegations that name a specific chemical substance, but also those that *reasonably* implicate a chemical. Therefore, the proposed rule states that firms must also keep allegations that name or identify the following: an article which contains a specific chemical substance or mixture; a company process or operation that involves one or more chemical substances; or an effluent, emission, or other chemical discharge from the site of manufacturing, processing, or distribution.

Recordkeeping Requirements

As mentioned earlier, a major purpose of this rule is to establish a complete record for both the EPA and industry, so that a body of knowledge will exist for reference should concern arise over a particular chemical. The record can provide another means for industry to monitor the safe production and use of chemical substances and mixtures. In addition, EPA could request the submission of allegations that involve a chemical which is being investigated. After analysis, those allegations could then be used during the assessment process to supplement already known toxicity and exposure data on the chemical substance. A further purpose of the records could be to provide a means during inspections to help determine whether a chemical problem exists at a plant site.

This proposal would require firms to keep copies of original allegations and to establish records that contain specified information about the allegations. A standard EPA form is offered as an optional recordkeeping form. The same form would be mandatory for reporting purposes. It is important that EPA receive the reports in a standard format so that they can be processed and evaluated efficiently. On the other hand, the form would be optional for recordkeeping since the Agency recognizes that firms may have already developed other forms or automated systems of recordkeeping which may not be compatible with the proposed EPA form. The proposed rule specifies the information that must be kept if the EPA form is not used. The Agency solicits comments concerning the appropriateness and usefulness of the information on the form. The form appears as Appendix I to the proposed rule.

This rule would also require firms to file allegation records and forms in a specified way so that this information could be easily retrieved. Allegation records and forms would be filed by chemical substance if the substance is known. However, for cases in which it is not possible to identify a specific chemical as the cause of a problem, firms would establish files according to mixture identity, and, if this cannot be determined, by the identity of the

article, company process or operation, or plant site discharge involved.

The rule would require that the results of any follow-up investigation be kept with the allegation records and the corresponding EPA form or company form or file. This is important to a basic purpose of the rule, which is to establish a complete historical record. Such a record should include information that the firm recorded on its own, and information that was recorded because of requirements set by another agency, such as the Occupational Safety and Health Administration (OSHA).

A firm must keep allegation records, recordkeeping forms, and the results of any follow-up investigations at the site where the allegation is received. The Agency believes that it is logical to keep a complete record at the site where the problem occurs, for reference purposes. In connection with the proposed automatic reporting requirement, plant sites must also send copies of the EPA standard form or company form to be aggregrated and reported by the company headquarters, if this differs from the site where the allegations were received.

We have included an alternative method of compliance for distributors. This would permit a distributor to send allegations to the appropriate manufacturer or processor instead of keeping them as records. The distributor would be required to send an allegation within five days of its receipt, and to keep a log (thirty years for employee allegations, five years for others) showing the name and address of the person to whom the allegation was sent, the date it was sent, and a brief description of the chemical that is the subject of the allegation. This would greatly reduce the recordkeeping requirement for distributors, while adding only a minimal burden to the manufacturers and processors who would have already established procedures for recordkeeping and reporting allegations. Furthermore, this provision would reduce the number of firms that are required to retain allegation records and to report to EPA. The Agency invites comments on the benefits or burdens of this alternative compliance method and whether it should be included in the final rule.

To avoid duplicating records that already exist, this rule proposes an alternative compliance method for keeping consumer complaints. Firms may already keep records that may be required by this rule because of requirements in regulations carrying out section 16(b) of the Consumer Product Safety Act (CPSA). If so, these firms would not be required to make copies of these CPSA records to include as part of the section 8(c) record. However, firms would keep consumer complaints for the length of the time outlined in this proposal and would report them as required by this rule. The Agency also thinks that the CPSA records should be retrievable in the same way as section 8(c) records. For example, records should be filed by chemical or article identity. The proposed rule therefore states that they must be retrievable in the manner outlined for section 8(c) allegations and forms, in section 717.15 of this proposed rule. The Consumer Product Safety Commission (CPSC) has proposed (see 42 FR 57642), but has not yet promulgated final rules under section 16(b) of the CPSA. This alternative would be available only when those final rules have been promulgated.

The Agency is concerned that there is no "feedback" mechanism for allegers to learn of any actions which may result from submitting an allegation to a company. Persons who make allegations will do so to protect themselves and others from similar effects in the future, and should know the outcome of their allegation. The Agency requests comments on the kinds of feedback mechanisms that EPA could require, how such mechanisms should be implemented, and who should be subject to such a requirement.

An employee making an allegation is afforded protection from employer reprisal. TSCA section 23(a) provides that "No employer may discharger any employee or otherwise discriminate against any employee * * * (who) assisted or participated * * * in any other action to carry out the purposes of this Act." An employee who believes that he has been discriminated against may file a complaint under section 23 with the Secretary of Labor.

Reporting Requirements

As proposed, this rule would require firms to submit certain allegations upon the request of the Agency. A firm would then be required to transcribe data from the allegation records to a one-page, pre-printed EPA form for admission. In addition, the Agency plans to include in the final rule a requirement for firms to automatically report allegations to EPA. Section 717.16(b)(1) of the rule has been reserved for such an automatic reporting provision.

The purpose of this provision would be to make the Agency aware of any unusual pattern of effects of unsuspected chemical problems. To detect such patterns, the Agency proposes to handle allegations reported under section 8(c) in a manner similar to that now used for substantial risk notices under section 8(e). First, each allegation will be carefully studied. The assessor will place the allegation in its proper context by also referring to existing literature on the chemical's toxicity and uses, examining available exposure data, and searching for other similar adverse reactions which are previously known. Should this study uncover a problem that warrants further investigation, the Agency may request other related information from the firm that submitted the allegation. Through this method, the Agency hopes to detect problems not previously recognized as serious or to uncover problems that have gone unnoticed. If the initial study finds that there may be a problem, but that it may be best handled under another authority, the allegation may be referred to OSHA, CPSC, or other EPA program offices. Each allegation will be entered in a data base that will extend the usefulness of the allegation. Primarily, the data system will permit EPA to track from one place all allegations reported to the Agency from anywhere in industry. Here again, by building an historical file, the Agency hopes to be able to detect patterns that were previously not recognized. A further statistical use will be to monitor the effectiveness of the final rule by allowing easy review of the types and numbers of allegations reported to EPA.

The Agency is concerned that automatic reporting be designed to result in the reporting of allegations that can be reasonably analyzed. The Agency is particularly concerned by comments from industry (see minutes of August 15, 1979 meeting, Public Record) that companies are often deluged with complaints after introducing any new or changed product. It may be that the sheer numbers of such allegations would overload the EPA's analytical resources if the complaints are about health effects. It is also possible that the numbers of chemical consumer products encountered by an individual consumer would make it unlikely that a consumer will be able to identify any one as a cause of a recordable adverse reaction. Therefore, the Agency is considering whether consumer allegations should be subject to reporting in a different manner than other allegations or should perhaps be exempt from automatic reporting. EPA requests comments on the best approach.

EPA is considering an automatic reporting system in which companies would forward allegation records to EPA whenever three are received in a twelve-month period for the same chemical substance, mixture, process,or

site discharge. The threshold number is a matter on which comment is solicited. The suggested threshold of three is based on the following considerations. The threshold must be a reasonable one in the context of several situations including plant neighbor allegations and consumer allegations, as well as employee allegations. We considered that the source of employee allegations about any one chemical or process will be a relatively small group of workers, even if the company is quite large. For instance, a threshold of ten to twenty allegations would be too high if there were only twenty to thirty workers involved in a process. On the other hand, three allegations from a group of thirty workers may indicate that a workplace problem is developing. Similarly, three allegations about a plant effluent would be unlikely to be simple coincidence and may indicate a problem. We have also taken into account the fact that the Conference Report on TSCA contains a statement that "[b]ecause the ultimate significance of adverse reactions is difficult to predict, the conferees intend that the requirements to retain records err on the side of safety". We believe that this Congressional advice applies equally to *reporting* under section 8(c).

The Agency is considering alternative definitions for the automatic reporting threshold. One option under consideration is to apply the threshold over a time period other than twelve months, up to as long as five years. Other options under consideration, which might subsitute for or complement the automatic reporting threshold, could require firms to immediately report to EPA:

(a) Any allegation of carcinogenic, mutagenic, tertatogenic or reproductive effects;

(b) Any allegation that involves:

(1) A new chemical substance (i.e., any substance that was reported to EPA under the premanufacture notification requirements of Section 5(a)(1)(A) of TSCA);

(2) A chemical substance that has been recommended by the Interagency Testing Committee for priority consideration by EPA; or

(3) A chemcial substance that is the subject of a proposed or final rule under Section 4, 5, or 6 of TSCA;

(c) Any allegation made by a representative of organized labor or any State or local government; or

(d) Any allegation that involves a chemcial substance which had been the subject of a previous section 8(c) report by that firm.

These possible alternatives, or some combination of them, may be adopted in the final rule and should be carefully considered in comments on this proposal.

The Agency is considering other methods of obtaining reports of section 8(c) allegations. In lieu of the threshold approach discussed above, the rule could require an annual statistical report of numbers of allegations received on chemical substances, mixtures, processes, and site discharges. The Agency invites comment on the statistical approach as well as suggestions of other alternatives. The final decision will take into account all comments on the alternatives and comments on the definition of "significant adverse reactions," since the two are interdependent.

In connection with automatic reporting under this rule, EPA believes the company headquarters should be responsible for reporting to EPA. The Agency thinks that this approach is logical because a firm's headquarters would be in the best position to aggregate allegations if the company has several plant sites. Placing the responsibility for automatic reporting on the company headquarters ensures that firms and EPA will be made aware of potential problems that occur in a number of plant sites, even if only one or two allegations are filed at each individual site. To simplify reporting, only company headquarters would report to EPA, and then would send only copies of the EPA standard form to the Agency. The headquarters would be required to send these copies to the Agency within fifteen days of the time the reporting threshold is reached. Subsequent allegations concerning the same cause would also be submitted to EPA if received within a year after the initial submission. Reporting by headquarters would also be required if the automatic reporting provision prescribes an annual statistical report instead of "threshold" reports. The Agency would like comments on these aspects of automatic reporting.

To avoid duplicating reports, the proposal contains a provision which would exempt firms from the automatic reporting requirement if a firm's investigation of a section 8(c) allegation has resulted in the firm's filing a report with EPA under section 8(e) of TSCA (substantial risk notification), or with the Consumer Product Safety Commission under section 15(b) of the Consumer Product Safety Act (substantial product hazard notification).

The proposed rule also contains a provision to protect the privacy of individuals. Specifically, firms are to omit names (or any other identifiers of individuals who have made allegations) when they report to EPA, unless EPA specifically requires names to be submitted in a particular case.

To help the Agency design the automatic reporting provision and predict its effects, discussions have been held with industry and other interested persons. Meetings were held on November 11, 1978, and August 15, 1979, to discuss the provisions of the rule and solicit information about the numbers and types of allegations now received by industry. Some useful information has been submitted to EPA, although more complete data are expected in response to EPA requests for industry assistance in this matter. Obtaining information on allegations industry currently receives will enable EPA to determine an automatic reporting requirement threshold that will serve the Agency's purpose without unnecessarily burdening industry. The automatic reporting threshold which EPA finally determines will depend on the extent to which industry submits complete information and accurate numbers. In the absence of accurate data from industry, EPA will determine an automatic reporting threshold from best estimates based on the information in the Agency's possession or gathered from other sources.

A "Reports Impact Analysis" has been prepared to estimate costs of a requirement that allegations be reported when three are received by a company in a twelve-month period. This document is in the public record available for review in the OPTS Reading Room. In this document are the basic costs of recording, filing, and reporting allegations; using an adjusted multiplier, the basic costs can be reapplied to any reporting requirement. Basically, the analysis found that automatic reporting will constitute the smaller fraction of the total costs of this rule to industry, with most costs resulting from the recordkeeping requirement. This estimate is a result of industry comments (see item 4 of the record described at the end of ths preamble) on previous drafts of this rule. These comments indicated that few allegations are received by firms each year. However, previous comments addressed a narrower definition of "significant adverse reactions" than the one in this proposal. The Agency specifically requests information about the number of allegations industry can expect to receive in view of the proposed definition.

The Agency will consider conducting a pilot test of any final automatic reporting requirements. The method of

conducting such a test could be to select certain segments of the potential respondents and require those persons to submit reports in accordance with the automatic reporting provision. Reports submitted over a specified period of time would be assessed before applying the requirement to all persons who keep records of allegations under section 8(c). The Agency is concerned about the broad impact that may result from reporting, in terms of both the number of respondents who may have to submit reports and the number of reports EPA may have to assess. Thus, a pilot test may determine the number of reports that would be submitted in relation to the number of allegations received. The Agency may be better able to estimate the impact on industry of a reporting requirement and to project the kinds of information reports may yield. In considering the need to test any reporting requirement, EPA will examine information submitted in response to this proposal and determine the need to learn more about the numbers and content of allegations now received by industry. The Agency invites comments on the need for a pilot test, the objectives of such a test, and procedures for selecting industrial segments for the test.

Existing Records

Many firms may already keep records of allegations of significiant adverse reactions. Existing records may vary in terms of the content and manner in which they are filed. The proposed rule would not require firms to reorganize their records to conform with EPA's recordkeeping and automatic reporting requirements. However, firms are requested to review records of allegations received after enactment of TSCA (January 1, 1977) and before promulgation of this Part to determine if there are three or more allegations, as defined in this Part, that implicate any one substance, mixture, article, operation, or site discharge. If three or more allegations were recorded within any twelve-month period, the Agency requests that the allegations be transmitted to EPA.

Economic Impacts

The Agency can only estimate the number of allegations which may be received by industry and the costs which may result from the proposed rule. A review of the industries potentially subject to keeping records indicates that over 600,000 firms with approximately 20 million employees may be affected (see Appendix B, Reports Impact Analysis). Processors of chemical substances and mixtures may be found across the spectrum of mining, manufacturing, and wholesale trade industries (SIC codes 10–14, 20, 22–28, 31–39, 49–51). Analysis of the possible burdens to industry indicates that the highest likely annual recordkeeping cost to all of industry will be $450,000. Preliminary estimates are that 10,000–20,000 allegations may be received and filed annually, with an estimated cost of $22,500 to process each allegation. If an automatic reporting requirement were to result in 5% of these allegations being submitted to EPA (at an estimated cost of $55 per allegation package), the additional annual cost to all of industry would be $18,150. The Agency invites comments that estimate the number of allegations which may be received annually and the costs which may result from both recording and reporting to EPA. The reasoning behind the estimated costs is described in the "Section 8(c) Reports Impact Analysis". The analysis covers the costs for a company to receive, process, and file an allegation, and also the numbers of allegations which may be received annually by industry. These estimates are used to calculate the lowest and highest costs to industry which may result from keeping the section 8(c) records. The lowest and highest costs to industry from automatically reporting allegations to EPA are also estimated. While the analysis examines the costs to report three independent allegations received in a twelve-month period, we have extended that analysis to show the likely costs from different levels of reporting to EPA. The "Section 8(c) Reports Impact Analysis" is part of the Public Record and may be obtained by writing or calling the Industry Assistance Office, Office of Pesticides and Toxic Substances (TS–799), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 800–424–9065; in Washington call 554–1404.

Confidentiality

Firms may assert a claim of business confidentiality for all or part of any records. EPA is aware of the need to maintain the confidentility of any legitimate trade secret. Confidential information will be safeguarded as provided in the "TSCA Confidential Business Information Security Manual" adopted by EPA in July, 1978.

Any claims of confidentiality must be made at the time of submission, and substantiated as described at 40 CFR 2.203(a)(2), within 15 working days of submission, and in the manner specified in § 717.17 of this proposed rule. This rule would require submission of two copies of records containing confidential material—one copy indicating what data are claimed as confidential and one copy without the confidential information. EPA will consider failure to submit two copies as a waiver of the confidentiality claim. However, EPA will notify firms who claim parts of records confidential if they did not submit the required two copies. This provision affords persons the opportunity to correct errors and thus prevent data claimed as confidential from being placed in the public file. To ensure proper handling, submissions must be addressed to the Document Control Officer of the Office of Pesticides and Toxic Substances.

Sunset Provision

Internal EPA regulations state that new reporting requirements will contain a provision for repealing that requirement on a specific date within five years after their promulgation. This proposed rule is exempt from the imposition of such a "sunset" requirement because the records are required by statute. However, the rule will be reviewed periodically in the years after it is promulgated to study its effectiveness and associated burdens. EPA will consider comments received from any source on the effectiveness of the rule, with the aim of reducing the burden on affected parties while satisfying the provisions of section 8(c).

Public Meetings

During the 90-day comment period, EPA staff responsible for developing this proposal will be available to meet with interested persons from individual companies, organized labor, trade associations, and environmental or consumer organizations. Most meetings will be held at EPA in Washington, D.C. However, to facilitate state and local comments, the Agency will hold one or two meetings outside of Washington, D.C., in a locale central to a large group or groups requesting the meeting. The Agency will determine time and place based on demonstrated need and interest.

EPA will provide facilities and make other necessary arrangements for such meetings. The meetings will be open to the public and the Agency will make transcripts or summaries of the meetings for inclusion in the public record.

Anyone interested in requesting a meeting or in learning the schedule of meetings may call the Industry Assistance Office at 800–424–9065 or, in Washington, 554–1404.

EPA encourages the public to use the Industry Assistance Office's toll-free telephone service during the early part of the comment period in order to clarify

its understanding of the proposal and develop comments.

EPA also encourages the public to use the opportunity for meeting-by-request, as offered above. The Agency has found that such meetings make it easier for the public to give EPA a sense of the predicted costs and process of compliance. Case-studies, impact analyses, interpretations of definitions used in the proposed rule, and thoughts on how a proposal would work in practice are particularly helpful to the Agency. Such material or experience, while it underlies them, often are not conveyed in written comments. Presentation of such material in a roundtable format enables the commentator to talk-and-walk his way through an anticipated impact and EPA to cross-check on the spot his meaning and assumptions. The Agency has found this sort of exchange enhances significantly the utility of such commentary.

Public Record

EPA has established a public record for this rulemaking (docket number OTS 083001). The record, along with a complete index, is available for inspection in the OPTS Reading Room, 447 East Tower, from 9:00 a.m. to 5:00 p.m. on working days (401 M Street, SW., Washington, DC 20460). This record includes basic information that the Agency considered in developing this proposed rule. The Agency will supplement the record with additional information as it is received. The record includes the following categories of information:

1. This proposed rule.
2. The Advance Notice of Proposed Rulemaking, published in the Federal Register on March 11, 1977 (42 FR 13579).
3. All comments on that Advance Notice.
4. A draft of this proposed rule, dated October 12, 1978, sent to selected industry, labor, and public interest groups.
5. All letters of transmittal sent with that draft, and comments received on it.
6. Minutes of a November 13, 1978 meeting with industry and special interest groups to discuss the TSCA section 8(c) draft rule.
7. "Notification of Substantial Risk Under Section 8(e)," March 16, 1978 (43 FR 11110), and comments received.
8. Occupational Safety and Health Administration regulations on "Recording and Reporting Occupational Injuries and Illnesses" (29 CFR Part 1904), and forms revised in 1978.
9. Consumer Product Safety Commission proposed reporting requirements regarding recordkeeping of consumer product safety complaints, November 3, 1977 (42 FR 57642).
10. Consumer Product Safety Commission interpretation of policy for "Reports of Substantial Product Hazards," August 7, 1978 (43 FR 34988).
11. "Final Report on the Economic Impact of Proposed Recordkeeping Rules to Deputy Associate Executive Directorate for Economic Analysis, U.S. Consumer Product Safety Commission," Battelle, Columbus, Ohio, March 19, 1979.
12. Minutes of an August 15, 1979 meeting with industry and special interest groups to discuss the TSCA section 8(c) draft rule.

EPA anticipates adding to the rulemaking record the following types of information:

1. All comments on this proposed rule.
2. All relevant support documents and studies.
3. Records of all substantive communications between EPA personnel and persons outside the Agency. (This does not include any inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)
4. Minutes, summaries, or transcripts of any public meetings held to develop this rule.
5. Any factual information considered by the Agency in developing the rule.

EPA will designate the complete rulemaking record, as prescribed by section 19(a)(3) of TSCA, on or before the date the regulation is promulgated, and will accept additional material for inclusion in the record at any time between this proposal and such designation. The final rule will also permit persons to point out any errors or omissions in the record.

Note.—EPA has determined that this document does not contain a major proposal that requires preparation of a Regulatory Analysis under Executive Order No. 12044.

EPA proposes to establish a new 40 CFR Part 717 as set forth below.

Dated: June 27, 1980.

Douglas M. Costle,

Administrator.

PART 717—RECORDS AND REPORTS OF ALLEGATIONS OF SIGNIFICANT ADVERSE REACTIONS TO HEALTH OR THE ENVIRONMENT

Sec.

Authority: Sec. 8(c), Pub. L. 94-469, 90 Stat. 2029 (15 U.S.C. 2607(c))

§ 717.11 Scope and compliance.

(a) Section 8(c) of the Toxic Substances Control Act (TSCA) requires manufactures, processors, and distributors of chemical substances and mixtures: (1) To keep "records of significant adverse reactions to health or the environment, as determined by the Administrator by rule, alleged to have been caused by the substance or mixture"; and (2) to "permit inspection and submit copies of such records", upon request of any designated representative of the Administrator. This rule implements section 8(c) of TSCA. It describes the records to be kept and prescribes the conditions under which a firm must submit or make the records available to a duly designated representative of the Administrator.

(b) Section 15(3) of TSCA makes it unlawful for any person to "fail or refuse to (1) establish or maintain records, (2) submit reports, notices or other information, or (3) permit access to or copying of records as required by this Act or a rule thereunder". Section 16 states that violating section 15 makes a person liable to the United States for a civil penalty and possible criminal prosecution. Under section 17, the district courts of the United States have jurisdiction to restrain any violation of section 15.

§ 717.12 Definitions.

The definitions set forth in Section 3 of TSCA and the following definitions apply to this part:

(a) "Allegation" means a statement, made without formal proof or regard for evidence, that a chemical substance or mixture has caused an adverse reaction to health or the environment.

(b) "Firm" or "company" means any person that is subject to this rule, as defined in § 717.13, below.

(c) "Manufacture" or "process" means to manufacture or process for commercial purposes.

(d)(1) "Manufacture for commercial purposes" means to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes, among other things, such "manufacture" of any amount of a chemical substance or mixture,

(i) For distribution in commerce, including for test marketing, and

(ii) For use by the manufacturer, including use for product research and development, or as an intermediate.

(2) "Manufacture for commercial purposes" also applies to substances that are produced coincidentally during ther manufacture, processing, use, or disposal of another substance or mixture, including both byproducts that are separated from that other substance or mixture and impurities that remain in that substance or mixture. Such byproducts and impurities may, or may not, in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

(e) "Person" includes any individual, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body, and any department, agency, or instrumentality of the Federal Government.

(f) "Process for commercial purposes" means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included. If a chemical substance or mixture containing impurities is processed for commercial purposes, then those impurities are also processed for commercial purposes.

(g) "Retailer" means a person who distributes in commerce a chemical substance, mixture, or article to ultimate purchasers who are not commercial entities.

(h) "Significant adverse reactions" are reactions which may indicate a tendency of a chemical substance or mixture to cause long-lasting or irreversible damage to health or the environment. In addition to obvious indicators such as major human diseases or ecological damage, such indicators include:

(1) Health effects. (i) Which, although they persist only for the duration of exposure, such as nausea or impaired vision, are experienced repeatedly by a person upon exposure to the substance;

(ii) Which persist beyond the period of exposure, such as prolonged headaches or loss of muscle control; or

(iii) Which occur after cessation of exposure, such as sterility or delayed neurotoxicity; and

(2) Environmental effects, even if they are restricted to the environs of a plant or disposal site, such as gradual or sudden changes in the composition of plant or animal life in an area. Examples of this are: (i) Abnormal numbers of deaths of animals or plants, (e.g., fish kills);

(ii) Reduction of the reproductive success or the vigor of a species;

(iii) Reduction in agricultural productivity, whether crops or livestock; or

(iv) Alterations in the behavior or distribution of a species.

(i) "Site" means a contiguous property unit. Property divided only by a public right-of-way is considered one site. There may be more than one manufacturing plant on a single site.

(j) "Substance" means a chemical substance or mixture unless otherwise indicated.

§ 717.13 Who is subject to this Part.

All manufacturers, processors, and all persons who distribute substances in commerce except retailers, are subject to this rule. The exemption of retailers does not apply to retailers who are also manufacturers or processors of the substance in question.

§ 717.14 Which allegations must be kept.

(a) Firms must keep any allegation of a significant adverse reaction to health or the environment.

That implicates a substance by: (i) Naming a specific substance,

(ii) Naming an article which contains a specific substance,

(iii) Naming a company process or operation in which substances are involved, or

(iv) Identifying an effluent, emission, or other chemical discharge from a site of manufacturing, processing, or distribution of a substance; *and*

(2) That is submitted: (i) In writing and signed, or

(ii) Orally, but not anonymously,

(A) By an employee to a supervisor, company physician or health unit staff member, or company agent,

(B) By any source, such as an individual consumer, a neighbor of a plant, a public health official, or an organization on behalf of its members, to a company agent, public relations officer, or any other appropriate company official.

(b) An allegation of a health effect(s) on a single individual shall be counted as one allegation. For example, if an allegation is made in behalf of five individuals, it should be counted as five allegations. An allegation by a single source of an environmental effect shall be counted as one allegation.

§ 717.15 Recordkeeping requirements.

(a) *Contents of records.* (1) Upon receiving each written and signed allegation, a firm must date it and keep it. A firm must write down, date, and keep each oral allegation (including the name of the alleger) that is subject to this rule. All allegations shall be kept in a file designated for this purpose. An allegation is considered received when it is first reported to or known by a supervisor, company physician or health unit staff member, or any other appropriate company official.

(2) A firm must keep the data described in paragraph three of this section, either on EPA Form No. 7710–29, or by the firm's own recordkeeping method, and link the data to the written allegation by a unique reference number. Oral allegations may be written down initially on the EPA form. The data required by paragraph three must be kept with the original allegation. EPA Form No. 7710–29 is available from EPA Regional Offices or by writing or calling the Industry Assistance Office, Office of Pesticides and Toxic Substances (TS–799), Environmental Protection Agency, Washington, DC 20460, 202–554–1404 or 800–424–9065 (toll free).

(3) Firms must record the following: (i) The name of the company; the name and address of the plant site which receives the allegation; the name, title, and telephone number of the company official whom EPA can contact for further information; and the date the allegation is received.

(ii) The implicated substance, mixture, article, company process or operation, or site discharge (see paragraph four of this section).

(iii) A description of the alleger (e.g., "company employee", "individual consumer", "plant neighbor"). If the allegation involves a health effect, the sex and year of birth of the individual should be recorded.

(iv) A description of the alleged health effect(s), indicating whether the effect(s) is prolonged, recurrent, or incapacitating. The description must relate how the effect(s) became known and the alleged route of exposure, if ascertainable.

(v) A description of the nature of the allaged environmental effect, identifying the affected plant or animal species.

(4) Allegations must be filed according to one of the following: (i) Chemical substance identity;

(ii) Mixture identity, if the implicated chemical substance cannot be identified; or

(iii) Identity of the article, company process or operation, or site discharge involved, if the implicated chemical substance or mixture cannot be identified.

(5) The results of any company investigation or further required report that is made following a particular allegation must be kept by the firm with

the allegation and the corresponding EPA form or company record. For example, if an employee allegation results in a requirement for the firm to record the case on Occupational Safety and Health Administration Form 101 or appropriate substitutes (see 29 CFR Part 1904 for requirements under the Occupational Safety and Health Act of 1970), a copy of the OSHA record must be included in the allegation file.

(b) *Retention period.* Firms must keep records relating to employee allegations (whether submitted by or on behalf of the employee) for 30 years from the date they are received; all others must be kept for five years.

(c) *Location of records.* Firms must keep copies of the allegation, EPA Form No. 7710–29 or the company form or file, and the results of any follow-up investigation at the site where they are received. Copies of the EPA form or company form or file must also be kept at company headquarters if this differs from the site where the allegation is received.

(d) *Transfer of records.* (1) If a firm ceases to do business, the successor must receive and keep all the records that must be kept under this rule.

(2) If a firm ceases to do business and there is no successor to receive and keep the records for the prescribed period, these records must be transmitted by registered mail to EPA.

(e) *Alternative compliance methods.* (1) Distributors can satisfy the requirements of this rule by establishing and carrying out procedures for sending allegations to the appropriate processor or manufacturer within five days of receiving them. Distributors must keep a log of transmitted allegations, showing the name and address of the manufacturer or processor to whom the allegation was forwarded, the date on which each allegation was forwarded, and a brief description of the implicated chemical substance, mixture, article, or site discharge. The distributor must keep this log for thirty years for employee allegations and five years for others. This alternative compliance method does not apply to distributors who are also processors or manufacturers of the substance in question.

(2) Firms may keep allegations which are also subject to recordkeeping requirements under section 16(b) of the Consumer Product Safety Act in the manner required by the Consumer Product Safety Commission (see 16 CFR 116). However, those allegations must be retrievable according to the requirements of § 717.15(a)(3). Those allegations are also subject to the retention and reporting requirements of this rule. Firms must transcribe those allegations to EPA Form No. 7710–29 only if they become subject to the reporting requirement of § 717.16.

§ 717.16 Inspection and reporting requirements.

(a) *Inspection.* Firms must make records of allegations available for inspection by any duly designated representative of the Administrator.

(b) *Automatic reporting.*

(1) [Reserved]

(2) Whenever an investigation of an allegation(s) has resulted in a report to the EPA under section 8(e) of TSCA (substantial risk notification, see 43 FR 11110, March 16, 1978) or a report to the Consumer Product Safety Commission under section 15(b) of the Consumer Product Safety Act (substantial hazard notification, see 16 CFR Part 1115), the requirement for automatic reporting under this section will be considered waived by the EPA.

(c) *Other reporting.* At the request of any duly designated representative of the Administrator, each person who is required to keep records under this rule must transcribe the allegation to EPA Form No. 7710–29 and submit copies of those forms. EPA will announce any such requirements for submitting records, apart from automatic reporting under paragraph (b) of this section, by a notice in the **Federal Register** if large numbers of firms are involved. When only a few are involved, EPA will announce the requirements by letters to appropriate firms, signed by the Assistant Administrator for Pesticide and Toxic Substances or his designee, and will specify which records must be submitted.

(d) *How to report.* Firms must submit records (preferably by certified mail) to the Document Control Officer, Office of Pesticides and Toxic Substances (TS–793), Environmental Protection Agency, Washington, DC 20460.

(e) *Privacy.* Firms must omit names or other identifiers of individuals who have made allegations whenever they appear in records forwarded to EPA under paragraph (b) of this section, in order to avoid jeopardizing the privacy of those individuals. EPA will require the names of individuals only for purposes of follow-up investigations. EPA will then explicitly request the records in a **Federal Register** notice or letter as indicated under paragraph (c) of this section.

§ 717.17 Confidential business information.

(a) Firms may assert a claim of business confidentiality covering all or part of any records they submit. EPA will not disclose information covered by a claim except in accordance with the procedures set forth at 40 CFR Part 2, as amended on September 8, 1978, 43 FR 39997 and March 23, 1979, 44 FR 17673. Firms claiming confidentiality on any portion of allegations reported to EPA must substantiate that claim of confidentiality in writing to EPA within 15 days of reporting the allegations to EPA. Written substantiation must accompany any records submitted under § 717.16(c).

(b) Section 14(b) of TSCA states that EPA may not withhold from disclosure, on the grounds that they are confidential business information, health and safety studies of any substance that has been offered for commercial distribution, or for which testing is required under TSCA section 4, or for which notice is required under TSCA section 5, except to the extent that disclosure of data from such studies would reveal:

(1) Processes used in the manufacturing or processing of a chemical substance or mixture, or

(2) The portion of a mixture comprised by any of the chemical substances in the mixture.

Any respondent who wishes to assert a claim that part of a study should be withheld form disclosure because disclosure would reveal a confidential process or quantitative mixture composition should explicitly explain the basis of the claim and clearly demarcate the material subject to the claim.

(c) If no claim of confidentiality is made for the records submitted to EPA, they will be placed in an open file, which will be available to the public without further notice to the firm.

(d) To assert a claim of confidentiality for data contained in records, firms must submit two copies of the record:

(1) One complete copy for internal EPA use must specifically indicate the data that the firm claims as confidential, by designating and marking the information on each page with a label such as "confidential", "proprietary", or "trade secret".

(2) The second copy must not contain any of the information claimed as confidential in the first copy; this copy will be placed in an open file that is available to the public.

(3) If the firm does not provide the second copy, EPA will notify the firm by certified mail. If EPA does not receive the second copy within ten days after the firm receives the notice, the first copy will be placed in the public file.

(e) Nothing in this section precludes EPA from withholding information in an allegation if disclosing that information would be an unwarranted invasion of personal privacy.

40 CFR Part 717

Records and Reports of Allegations of Significant Adverse Reactions to Health or the Environment

Appendix I

The following is the proposed form to record and report

BILLING CODE 6560-01-M

NOTE Please read instructions on reverse prior to completing this form.	U.S. ENVIRONMENTAL PROTECTION AGENCY **RECORD OF ALLEGED SIGNIFICANT ADVERSE REACTIONS TO CHEMICAL SUBSTANCES OR MIXTURES** *(This information required under the TSCA, Section 8(c))*	*Form Approved OMB No. 158-OXXX*

SECTION I – Company Identification

NAME AND TITLE OF COMPANY OFFICIAL		PHONE NUMBER	DATE OF ALLEGATION
COMPANY NAME		DIVISION AND PLANT NAME	
COMPANY ADDRESS		PLANT SITE ADDRESS	
CITY	COUNTY	CITY	COUNTY
STATE	ZIP CODE	STATE	ZIP CODE

SECTION II – Chemical Identification

NAME *(Chemical Substance/Mixture/Article/Process/Effluent, Emmission or Other Discharge)*

REFERENCE NUMBER TO VERBATIM ALLEGATION

SECTION III – Alleged Significant Adverse Reactions

☐ COMPANY EMPLOYEE ☐ INDIVIDUAL CONSUMER ☐ PLANT NEIGHBOR ☐ OTHER *(Specify)*

CHECK THE CATEGORY OF THE ALLEGED REACTION

HEALTH EFFECTS

PROVIDE THE FOLLOWING FOR PERSONS EXPERIENCING HEALTH EFFECTS

☐ MALE ☐ FEMALE YEAR OF BIRTH

☐	CANCER *(Specify Body Site)*	☐	NERVOUS SYSTEM DISORDER	☐	SKIN PROBLEM
☐	BIRTH DEFECT	☐	BEHAVIORAL DISORDER	☐	EYE AILMENT
☐	STERILITY	☐	RESPIRATORY DISORDER	☐	HEADACHE
☐	OTHER REPRODUCTIVE DISORDER	☐	GASTRO-INTESTINAL DISORDER	☐	OTHER *(Specify)*
☐	BLOOD DISORDER	☐	NAUSEA OR VOMITING		
☐	CARDIOVASCULAR DISORDER	☐	DIARRHEA		

ENVIRONMENTAL EFFECT

☐	ANIMALS AFFECTED *(Give names)*	☐	PLANTS AFFECTED *(Give names)*	☐	OTHER *(Specify)*

SECTION IV – Description and Comments

BRIEFLY DESCRIBE THE EFFECT(S) CHECKED IN SECTION III. DESCRIBE HOW THE EFFECT(S) BECAME KNOWN, AND, IF POSSIBLE, INDICATE IF THE EFFECT(S) IS/ARE PROLONGED OR RECURRENT OR INCAPACITATING. ANY PERTINENT COMMENTS SHOULD BE INCLUDED. *(Continue on reverse if necessary)*

U.S. EPA USE ONLY

EPA Form 7710-29 (12-79)

CONTINUATION OF SECTION IV

INSTRUCTIONS

WHO MAY COMPLETE THIS FORM

An employee's supervisor, a company physician or health unit, a company agent, public relations officer or any other responsible company official.

Section I
Enter the addresses of the company headquarters making the report and the plant site where the allegation was received.

Section II
Write the name of the chemical material which is alleged to have caused a significant adverse reaction to health or the environment. If a specific chemical substance cannot be identified, then identify the material by the most specific of the following: a MIXTURE, an ARTICLE or PRODUCT, an industrial PROCESS or OPERATION, or an EFFLUENT, EMMISSION, or other industrial SITE DISCHARGE. Indicate the CAS number if a chemical substance is specified.

A unique reference number must be included on this form that links it to the original written allegation, and this form must be kept in the same file as the original allegation.

SECTION III
Check the box that best describes the source of the allegation. The name of the individual making the allegation should NOT be included on this form. If the box "Other" is used, provide further identification of the source *(e.g., company name, consumer group, public health organization, etc.)*.

If the allegation involves a health effect, the sex and year of birth of the person making the allegation should be recorded, if possible.

Check the box or boxes which best describes the alleged effect(s). If the allegation concerns an environmental effect, in addition to checking the box, give the name of the animal(s) or plant(s) alleged to have been affected in the space provided.

Section IV
Describe, in the words of the person making the allegation when possible, the effect(s) and indicate whether it is PROLONGED, RECURRENT or INCAPACITATING if appropriate. Briefly describe how the effect(s) became known and the alleged route of exposure. Allegations naming cancer as a health effect should specify the body site *(e.g., liver)* and clearly describe the cancer.

Any clarification of the allegation, known explanation of the cause, or extenuating circumstances should be included if known at the time this form is filled out. The results of a follow-up investigation should not be included in this Section, but should be filed with this form as a separate statement.

This Section may be continued on the reverse of this form and an attached sheet of paper if additional space is needed to give a complete description.

BILLING CODE 6560-01-C

Section 8(c) Reports Impact Analysis

Legal Authority

1. Section 8(c) of the Toxic Substances Control Act (TSCA) requires all manufacturers, processors, and distributors of any chemical substance or mixture to keep records of significant adverse reactions to health or the environment alleged to have been caused by the chemical substance or mixture. Employee allegations must be kept for 30 years, and all others for five years. Records required to be maintained will include consumer allegations of harm to health, reports of occupational disease, and complaints of injury to the environment from any source. Each person required to maintain these records must permit their inspection and submit copies upon request by any duly authorized representative of the Administrator.

2. Background

a. *Purpose.*—The proposed rule will tell manufacturers, processors, and wholesale distributors what kinds of allegations to record and when to report them to the EPA.

This rule will serve two major purposes: (1) To establish an historical record to be examined whenever a chemical is discovered to present a possible risk; and (2) to reveal patterns of adverse effects or unsuspected chemical problems which should be considered during the hazard assessment process.

The Office of Testing and Evaluation (OTE) of the Office of Pesticides and Toxic Substances (OPTS), will review, analyze, and follow-up the allegations retained and submitted as a result of the section 8(c) requirement in TSCA. The Assessment Division, the Health Review Division, and the Environmental Review Division will study the submissions for signs of a hazard which may warrant further investigation or testing. Allegations that are submitted will be evaluated in an assessment document which will be abstracted for addition to the OPTS Chemicals In Commerce Information System (CICIS). That information will be used to (1) supplement data already known, (2) indicate an increase of a chemical substance's known hazard potential, (3) call attention to chemical substances previously considered to not present a hazard, or (4) identify previously unknown hazards. The Agency can then, as appropriate, use TSCA authorities to (1) require testing (section 4), (2) require submission of a significant new use notice (section 5), (3) ban or limit the manufacture or use (section 6), (4) declare an imminent hazard (section 7), or (5) require the reporting or retention of information that can be used for future analyses (section 8).

b. *Procedural Description.*—Firms subject to this rule will record written and oral allegations that implicate one of their chemical substances, by naming the chemical substance or mixture, or naming articles, industrial operations, or industrial site discharges that implicate a substance. These allegations will be stored in a file dedicated to section 8(c) allegations, and retained for 30 years (employee) or five years (all others). Distributors may forward to the appropriate manufacturer or processor any allegations received on that product, if they maintain a log containing specified information.

During the comment period for this proposal, the Agency will determine the conditions under which companies are to automatically report allegations to EPA. For the purposes of this analysis, it is hypothesized that whenever three allegations implicating the same cause are received within 12 months, the firm must forward copies of the standard EPA form to EPA within fifteen days after receipt of the third allegation. Section 8(c) reporting would be waived if the allegations result in a "Notice of Substantial Risk", under section 8(e) of TSCA, or a "Substantial Hazard Notification", under section 15(b) of the Consumer Product Safety Act.

Approximately 40,000 establishments that manufacture, process or distribute chemical substances and another 543,000 establishments which may process these substances will be subject to this rule. (See Appendix A to this report.) Retail distributors are exempted in this proposed rule, and other distributors may forward allegations to the appropriate manuracturer or processor.

c. *Unavailability From Other Data Sources.*—Records required by the Occupational Safety and Health Administration (OSHA) were examined as a possible substitute for the section 8(c) employee allegations. However, section 8(c) provides the means to allege the presence of a possible problem, without any proof. The OSHA Form 101 (see 29 CFR 1904) is intended to record accidents or document the cause of an injury, which is several steps beyond an allegation. The proposed rule directs that copies of any OSHA record that results from an allegation will be maintained with the section 8(c) record of the allegation.

The proposed rule does offer an alternative compliance method for retaining allegations or consumer complaints which are subject to recordkeeping requirements under section 16(b) of the Consumer Product Safety Act. These allegations have only to be filed and reported according to the requirements of this proposal.

3. *Alternatives*

(a) *Automatic Reporting Alternatives.* A number of variations are possible for an automatic reporting provision. In this Reports Impact Analysis, we have estimated costs of submitting allegations to EPA whenever three independent allegations are received on one chemical substance, mixture, article, process, or site emission in a twelve-month period. One alternative under consideration is to apply the threshold over a period of time other than twelve months, up to as long as five years. Patterns emerging over a longer time frame would have a better chance of discovery, yet the recordkeeping and file search burden would be increased for respondents. Other options under consideration might substitute for or complement the automatic reporting threshold. The rule could require firms to immediately report to EPA any allegations of specified effects (e.g., carcinogenic, mutagenic, teratogenic, or reproductive disorders). In addition, the rule could require firms to immediately report allegations about certain specified types of substances (e.g., new substances reported under Section 5(a)(1)(A) of TSCA, substances recommended by the Interagency Testing Committee, substances which are the subject of a proposed or final rule under Section 4, 5, or 6 of TSCA, or substances subject to previous section 8(c) reports). These alternatives could enable the Agency to examine allegations about selected chemical substances of concern. The Agency could require annual statistical reports or summaries of allegations received. The Agency could exempt individual consumer allegations from automatic reporting, because of the effects that product performance expectations may have on complaints. However, consumer compliants are likely sources of relevant information which could reveal patterns of significant proportions. Another option would be to require that consumer allegations be reported in a different manner than other allegations. The proposed rule requests comments on all of these alternatives.

(b) *Alternatives to Automatic Reporting.* The Agency could rely solely on inspecting records. This would reduce the cost to industry, and reduce the cost of EPA analysis of allegations that are submitted. The Office of Enforcement would have a significantly larger role if inspections were the major method of looking at allegations. The early warning mechanism would be lost, and thus EPA's capability to discover unsuspected hazards would be reduced.

(c) *Alternative to No Small Business Definition.* Different recordkeeping and reporting requirements could be based on the size of a firm. Different requirements would reduce the impact on small business while still covering a large portion of industry. However, there is no small business exemption in section 8(c), and such a provision would reduce the scope of the early warning mechanism resulting from automatic reporting to EPA.

(d) *EPA Reporting Form Alternative.* Use of the EPA form and the transcription requirement could be eliminated, and only the basic records would be reported to EPA. While this would eliminate a new form and reduce industry's paperwork, it would transfer to EPA the burden of sorting through many formats and kinds of information to properly assess the allegations. The form also provides industry with an additional guide as to what should be recorded, it is a simple one-page form to fill out, it simplifies assessment for EPA by having a standard format, and the form can be easily coded for computer entry.

(e) *Alternative to Excluding Retail Distributors.* All distributors could be subject to this rule, including retail distributors. Such an inclusion would require 1.4 million more businesses to retain and report allegations, and would significantly expand the coverage and impact of this rule. However, the potential for retail employee exposure is comparatively minimal, since retail distribution will mainly involve the handling of packaged products. Consumer allegations regarding name brand products will generally be sent to the manufacturer anyway—either directly by the consumer or indirectly via the retailer.

4. *Impact Analysis*

The following Impact Analysis has been prepared to examine the potential costs and

burdens of the proposed section 8(c) rule, both to industry and to EPA. To estimate the costs to industry, we have analyzed the time and probable personnel costs that may be incurred by a company to process and file an allegation once it has been received and recorded. Then, using estimates based on dialogues with industry, we have estimated the numbers of allegations which could be received annually by industry. By multiplying the estimated costs to process an allegation by the estimated number of allegations that could be received, we can make a reasonable estimate of the possible costs to industry from complying with the recordkeeping portion of the proposed rule. In addition, we have analyzed the potential costs to industry of complying with an automatic reporting requirement. To do so, we performed an analysis of the time and personnel cost to prepare and submit several independent allegations that implicate the same cause. While this analysis examined the cost of only one method of automatic reporting, we continued the analysis so that a range of costs are presented. We feel that the high and low costs of automatic reporting will draw comment and help the Agency examine alternatives. It is emphasized that this analysis, is composed of estimates (which may not be accurate), that those estimates are multiplied against other estimates, and the results may not be wholly realistic. However, for the purposes of analyzing the potential costs of this proposed rule, we feel that the costs presented below are within the range of actual costs. This analysis, as well as the preamble to the rule, offers our reasoning and solicits comment on many subjects. The Agency is dependent on commentors to offer alternatives to this method of analysis, provide actual figures to plug into our equations, and to improve our estimates.

I. Work Hour Requirements/Costs

A. *Respondents.* Approximately 583,000 firms employing 20 million workers will be required to record and report allegations. The following analysis, prepared by the Office of Regulatory Analysis and the Program Integration Division, describes the costs to industry of recording and automatically reporting allegations. Paragraphs two and three below (p. 10) are primarily concerned with "fixed costs", the costs to a company of receiving and filing an allegation. The recordkeeping requirements represent the largest and most costly impact of this proposed rule. The proposed costs of automatic reporting are included in paragraph 4 (p. 14) of this analysis because the Agency expects that some form of automatic reporting will be part of the final rule. One hypothetical set of conditions for reporting is presented here—three allegations implicating the same substance received within 12 months. However, the reporting threshold levels will be determined after considering comments on the proposed rule. Therefore, the costs of reporting will be some fraction or multiple of the figures in this analysis, and will depend on the automatic reporting conditions set forth in the final rule.

1. Work Hour Requirements/Costs Per Allegation

The time requirements and cost estimates for processing and submitting section 8(c) allegations are shown in Table 1 (p. 8). As previously stated, we have projected costs from the time an allegation is recorded. The cost estimate does not cover administrative costs to set up a file system or otherwise implement the rule. Further, some firms may design more extensive reviews of allegations than projected in this analysis. These costs are estimated for a typical firm, using labor cost estimates of: managerial time @ $30/hour, technical support staff @ $20/hour, and secretarial time @ $10/hour.

The unit cost is estimated for an average-sized firm. There may be variations from this cost for very large or very small firms. Also a lesser cost would occur for firms operating only one plant site since they would not incur the costs of forwarding the allegations to corporate headquarters. Alternatively, smaller firms may incur higher personnel costs because reviews may be performed by higher level personnel. However, this cost difference should not significantly affect the average.

The unit cost estimates given in Table 1 assume the following procedure for handling section 8(c) allegations:

a. Processing the Allegation: (i) An oral or written allegation of an adverse health or environmental effect is delivered to the plant manager from either an employee at the plant or from the public. The allegation is logged in by the secretary and reviewed by the plant manager.

(ii) The secretary forwards a copy of the allegation to the appropriate officer at corporate headquarters.

(iii) The allegation is received at corporate headquarters and reviewed by the appropriate officer. The section 8(c) allegation file is reviewed to determine if a file for the implicated chemical substance or mixture, article, industrial operation or site emission exists that contains other allegations.

(iv) A file on the chemical substance is created (if one does not already exist), and the allegation is filed.

b. Submitting a Group of Three Allegations Upon Receipt of the Third: (v) The file is retrieved and reviewed by managerial and technical staffs.

(vi) The allegations are transcribed to the standard EPA form and reviewed by the technical staff for accuracy.

(vii) Copies of the file are made, and the submittal package prepared.

(viii) The completed submittal package is then forwarded to EPA.

The "fixed" activity cost in Table 1 represents costs which will be incurred by the firm whenever a section 8(c) allegation is received, regardless of whether the allegation is ultimately forwarded to EPA. Since allegations are assumed to be submitted randomly throughout the year there are no appreciable economies of scale.

The "variable" cost component represents costs which would be incurred after three allegations had been received concerning a chemical and the three allegations must be submitted to EPA. Therefore, the total cost of processing three separate allegations on a chemical and then submitting the group to EPA can be calculated as follows:

($22.50 × 3) + $55.00 = $122.50, see Table 1

Table I.—*Unit Cost of Compliance With Section 8(c) Requirements*

Activity	Time processing allegation	Time submitting allegation	Fixed activity cost	Variable activity cost
I. Processing the Allegation				
Allegation received	0.25 hour clerical	NA	2.50	
	0.25 hour managerial	NA	7.50	
Allegation forwarded to corporate headquarters	0.25 hour clerical	NA	2.50	
Allegation received at headquarters and reviewed	0.25 hour managerial	NA	7.50	
Filed created; allegation filed	0.25 hour secretarial	NA	2.50	
II. Submitting the Allegations to EPA				
File retrieved, reviewed by managerial and technical staff	NA	0.25 hour secretarial		2.50
	NA	0.5 hour managerial		15.00
	NA	0.5 hour technical		10.00
Allegation transcribed to EPA form	NA	0.5 hour secretarial		5.00
	NA	0.5 hour technical		10.00
Copies made, materials prepared	NA	0.25 hour secretarial		2.50
	NA	0.25 hour managerial		7.50
Package sent	NA	0.25 hour secretarial		2.50
Totals	1.75 hour secretarial	1.25 hour secretarial	22.50	55.00
	0.05 hour managerial	0.75 hour managerial		
		1.0 hour technical		

2. Estimated Number of Allegations Received by Firms

The Agency has consulted with many sources to develop estimates of the number of section 8(c)-type allegations which are now received by industry. All estimates have had the same problem, namely that there never has been a requirement such as section 8(c), and we do not know for certain how many such allegations might be received annually. Due to the novelty of this requirement and the scant available data, the Agency has based this analysis on assumptions, estimates, and feedback on early drafts of the proposed rule. The groups also estimated the number of allegations that could be received annually based on definitions in an earlier draft of this rule. In that draft, "significant adverse reactions to health or the environment" were defined more narrowly. This proposal broadens the definition and coverage. Additionally, in the earlier draft, allegations were to name a specific substance, while this proposal allows persons making an allegation to cite a consumer product, industrial process or industrial site emission as the cause without specifying a chemical. These changes will increase the number of recordable allegations (some allegations may not be "recordable allegations" the first time, but may become recordable if the effect is experienced repeatedly by the same person). However, those industry estimates can still serve for estimating the potential number of allegations which may be received annually.

EPA has polled several sources to estimate the number of section 8(c)-type allegations received by industry each year. For the most part, the Agency has relied upon the following:

(a) Chemical industry and trade association contacts,

(b) Past experience of EPA staff with the chemical industry during the development of other section 8 rules, and

(c) Comparison with similar data collected by OSHA and BLS.[1]

Firms and chemical industry associations [2] which provided EPA with early estimates of the number of allegations received by chemical firms included:

(a) Chemical Manufacturers Association (CMA),

(b) Synthetic Organic Chemicals Manufacturers Association (SOCMA),

(c) American Texiles Manufacturers Institute (ATMI),

(d) National Retail Merchants Association (NRMA),

(e) National Retail Hardware Association (NRHA), and

(f) E.I. DuPont De Nemours & Co. (Inc.)

Estimates provided by the chemical industry used the number of company production employees as the basis for measuring the number of allegations received from any source by a company. So, the estimates of probable numbers of allegations a company might receive are based on the number of employees in the chemical industry, regardless of the fact that allegations may be submitted by consumers, plant neighbors, or others. In the case of estimates for section 8(c), the chemical industry used 1,000 employees as the common denominator as follows:

Number of allegations of all sorts ÷ Number of production employees

The substance of the chemical industry estimates is that 2–4 allegations will be received annually for every 1000 employees.

Since the chemical industry estimates of numbers of allegations are based on employment figures, we reviewed the number of production employees in firms which manufacture, process, or distribute chemical substances or mixtures (see Appendix A—Estimate of Persons Subject to TSCA Section 8(c)). Firms who manufacture and process chemical substances or mixtures can in large part be readily identifiable within the Standard Industrial Classification (SIC) codes 28 and 2911 (Group 1). However, additional manufacturers, processors, and distributors are spread throughout industry and commerce. "Chemical substance" under TSCA includes naturally occurring chemical substances, such as minerals and metals, and agricultural products, such as cotton. To make an accurate estimate of the section 8(c) impact, a determination was needed as to how many employees in all industries might be involved in the same kind of activity as employees in SIC codes 28 and 2911. The only source of information that comprehensively describes the make up and employment of U.S. industry is the Standard Industrial Classification Manual. The limitation of this source is that it classifies industry by end products and does not detail the activities involved in production. Therefore, one must rely on the description of end products to determine whether chemical processing is likely to be a part of the production. In addition, companies are classified according to their major products so it is possible that, for some companies, minor activities involving chemical processing may be missed. The analysis found that large segments of industry may include processors; however, in most of those segments, only a small percentage of the production employees can be expected to be involved in processing chemicals (as opposed to assembly work and other manufacturing activities). Examples of industries with incidental processing activities are apparel manufacturers (SIC 23), fabricated metal products (SIC 34), electrical machinery (SIC 36), and automotive manufacturers (SIC 37). In those segments (called Group 2 hereafter), chemical processing is expected to be incidental to the manufacture of another article. Therefore, for the purpose of estimating the number of section 8(c)-type allegations (which is based on estimates from the chemical industry), only a portion of the employees in Group 2 were counted. It was estimated that 10% of the employees in Group 2 on the average may be involved in chemical processing during the regular performance of duties. Some individual companies may be occupied 100% in chemical processing and others may be occupied 1%. As has been previously stated, the Agency has analyzed the costs of this completely new kind of requirement on scanty data and reasonable assumptions. We feel that 10% is a reasonable figure and is a multiplier that can be changed if better information is supplied through comments.

Appendix B to this analysis contains a listing of SIC codes that were selected as being either primarily engaged in manufacturing or processing chemical substances (Group 1), or as incidental processors or distributors (Group 2) (see Appendix A). Our review, using Bureau of Labor Statistics figures, concluded that over 583,000 establishments may manufacture, process, or distribute substances. In those establishments, there are estimated to be 3,200,000 employees in Group 1, and 17,200,000 employees in Group 2. The number of workers used to determine the possible number of allegations was the sum of the following equation:

Group 1 + (Group 2) (0.10) = Section 8(c) Worker Population = 4.9 million employees

Rounding off to an even 5 million employees:

(Number of Employees) × (2–4 allegations) ÷ 1000 employees = Number of Allegations = 10,000–20,000 allegations

This means that an average of 10,000–20,000 section 8(c)-type allegations could be received by industry each year.

3. Recordkeeping Cost Estimates

In Table 1 (p.6), we estimate that a company will expend 2.25 hours to receive and process an allegation (fixed cost), which is estimated to cost $22.50 per allegation. At $22.50 per allegation, for an estimated 10,000–20,000 allegations per year, the annual fixed costs to industry to process section 8(c)-type allegations is estimated to be $225,000–$450,000.

4. Automatic Reporting Cost Estimates

To assess the probable costs of an automatic reporting provision, we have

[1] The OSHA/BLS data on occupational injuries could not be used directly because they include illnesses from all occupational hazards rather than only those caused by exposure to chemical substances.

[2] These commentors and others are encouraged to provide estimates on the basis of the requirements proposed, since their estimates were based on an early draft.

estimated the numbers of allegations that might be submitted by firms to EPA. In addition, using the cost estimates in Table 1 (p.8), we have estimated the probable cost to industry if an automatic reporting provision is included in the final rule. For the purposes of this analysis, we have estimated the cost of an automatic reporting provision that requires the submission of allegations when three allegations about the same substance are received in a twelve-month period. These allegations would not have to be submitted to EPA except when three independent allegations are received about the same cause. The Agency estimates that only 3–5% of the total number of allegations received by industry will have to be submitted to EPA. The reason for this estimate is that we feel that it is improbable that three independent allegations about the same cause in the same twelve-month period will occur frequently. While this figure is clearly based on assumptions, we believe that this is a reasonable number from which to base cost estimates. If 3–5% of the allegations are reported, this means that EPA expects to receive between 300 (3% of 10,000) and 1000 (5% of 20,000) section 8(c) allegations per year. If these allegations are submitted to EPA in groups of three, the Agency anticipates receiving between 100 and 330 submittal packages each year.

In Table 1, we estimate that for a firm to review, transcribe, and forward a package of three allegations will require three hours and cost $55. Thus, the estimated annual cost to industry of submitting 100–330 packages of allegations is $5,500–$18,150.

We have also examined the possibility that the number of allegations submitted to industry may eventually double as the section 8(c) program becomes more widely known among employees and consumers. The cost estimates for this scenario are summarized in Table 2.

Costs to submit packages of allegations have been estimated for three scenarios in Table 2. In these scenarios we have estimated, according to three rates, the probable percentage of the allegations received by industry that could be automatically reported. For each scenario, costs have been computed for the different estimates of numbers of allegations that could be received annually by industry and subject to reporting to EPA. We estimate that industry may receive 10,000–20,000 section 8(c) allegations per year, and we have also computed the costs should industry receive double our estimate, or 40,000 allegations per year. Table 2 contains cost estimates for the following scenarios:

Scenario 1 Low reporting rate (3% of allegations received by industry are forwarded to EPA).

Scenario 2 "Most likely case" (5% of allegations received by industry are forwarded to EPA).

Scenario 3 "Worst possible case" (allegations are distributed such that all allegations received by industry (100%) must be submitted to EPA).

Each of these scenarios is broken down into three variations:

10,000—If 10,000 allegations are received by industry each year (2/1000 empl/yr)

20,000—If 20,000 allegations are received by industry each year (4/1000 empl/yr)

40,000—If 40,000 allegations are received by industry each year (8/1000 empl/yr)

TABLE 2—Estimated Costs of Automatic Reporting

BASIS OF COMPUTATION

Fixed Costs (Recordkeeping)

(Number of Allegations Received by Industry) × ($22.50)

Variable Costs (Automatic Reporting)

(Percent of Allegations Submitted to EPA) × (Number of Allegations Received by Industry) ÷ (Number of Allegations in Submittal Package)

[The product is divided by 3 because the $55 submittal cost is incurred only once for every three allegations submitted]

Total Cost to Industry = Fixed Costs + Variable Costs

SUMMARY OF RESULTS

	Number of Allegations Received by Industry		
	10,000	20,000	40,000
Scenario 1: 3% of Allegations Submitted to EPA.....	$230,500	$461,000	$922,000
Scenario 2: 5% of Allegations Submitted to EPA.....	$231,200	$468,300	$936,700
Scenario 3: 100% of Allegations Submitted to EPA.....	$308,300	$816,700	$1,633,300

Total Annual Cost to Industry of Automatic Reporting.

The total annual costs to keep and report section 8(c) allegations are estimated to range from a low of $230,500 (Scenario 1 at 10,000 allegations) to a high of $1,633,300 (Scenario 3 at 40,000 allegations). It should be noted that the "worst case" scenario (scenario 3) is considered to have nearly a zero probability of ever occurring; it is presented as an illustration of the absolute maximum cost which may be imposed on industry by the section 8(c) program. Similarly, there is a low probability that industry will receive 40,000 allegations per year, which is double the estimate we derived from industry input.

The costs for the "most likely" case scenario (Scenario 2 at 10,000–20,000 allegations) range from $231,200 to $468,300, depending ultimately on the number of allegations which are actually received by industry. EPA believes these figures from Scenario 2 represent the most realistic estimate of the section 8(c) program costs with automatic reporting included. If the number of allegations received by industry doubles to 40,000 allegations per year, the estimated annual costs may range from $922,000 (Scenario 1) to $1,633,300 (Scenario 3).

5. Comparing Recordkeeping to Automatic Reporting Cost Estimates

In conclusion, EPA estimates the total short-run cost to industry of the section 8(c) program to range from $230,500 to $816,700 if 10,000–20,000 allegations are received annually. In this estimate, "fixed" recordkeeping cost range from $225,000–$450,000, and "variable" reporting costs range from $5,500–$18,150. If the size of the program were to double due to increased worker and consumer awareness, the Agency estimates that the total cost to industry would rise to $922,000–$1,633,300. In this doubled estimate, "fixed" recordkeeping costs are $900,000, and "variable" reporting costs range from $22,000–$733,300. Except in the cases of Scenario 3 of Table 2, where 100% of the allegations are reported to EPA, the automatic reporting costs are very small compared to the basic cost of complying with the section 8(c) recordkeeping requirements. In none of these cases is the cost of the section 8(c) program very burdensome to either the industry as a whole or individual firms.

B. Agency (EPA) Impacts

Evaluation of section 8(c) submissions will require the Agency to devote the following resources:

1. *Prescreen:* (Chemical Information Division) The Document Control Officer receives, records on a log, classifies, and forwards the allegation package to OTE. These activities are estimated to require four hours per submitted package of three allegations.

2. *Assessment:* (Office of Testing and Evaluation) OTE has dedicated 2½ person years to assess section 8(c) allegations. Specifically, the Assessment Division and Health Review Division will each devote 1 person year; the Environmental Review Division will devote ½ person year. OTE is uncertain how long each allegation assessment should take, but if the section 8(e) submissions are a valid indicator, then each allegation should require eight hours, or 24 hours per package of three allegations.

3. *Data Entry:* (Chemical Information Division) The Systems Operations Branch estimates an annual cost of $100,000 for the contractor to abstract and enter section 8 (c), (d), and (e) submissions. These submissions will be entered onto the OPTS CICIS (Chemicals In Commerce Information System). This experience to date is 660 section 8(d) health and safety studies, and 275 section 8(e) notices of substantial risk. The Office of Regulatory Analysis estimates that EPA is likely to receive 1,000 allegations per year, which would represent about double the submissions to now handled by the contractor, and therefore would cost approximately $50,000 a year.

4. *Enforcement:* (Office of Enforcement) The Office of Enforcement intends to actively enforce this rule. Inspections of section 8(c) files will be conducted in conjunction with inspections performed for other provisions of TSCA and other laws administered by EPA. Present plans to combine inspections means that the rule will have little effect on OE resource allocation.

II. Secondary Impacts

A. *Recordkeeping Changes.* The requirements of this rule will create a new requirement to record and report allegations; however no new positions (jobs) or primary functions should result from meeting those requirements.

B. *Effects on Agency Program Operations.* Little effect, beyond that described above, is expected on Agency operations unless the number of submissions is considerably more than anticipated. Enforcement activities may be increased if inspections uncover widespread compliance problems.

5. Respondent Coordination

During the development of this rule, there have been a number of exchanges with industry representatives. On November 13, 1978, a Work Group meeting was held with representatives from industry (see Public Record in Preamble) at which a draft of the rule was discussed. A public meeting was held on August 15, 1979, to discuss this proposed rule, which has several changes from the previous draft (see Public Record in Preamble). This proposal reflects some comments from that meeting, especially concerning the automatic reporting provision. The conditions requiring automatic reporting will be set after considering comments in response to this proposal. Several contacts with the industry helped establish the probable number of allegations that will be received by industry and the costs to industry [see paragraph 4(I)(A)(2) above]. Furthermore, many telephone calls have been received by OPTS from industry representatives that either provided input or concerned the status of the rule.

Appendix A—Reports Impact Analysis

Estimate of Persons Subject to TSCA Section 8(c)

Introduction

An effort has been made to define, by Standard Industrial Classification (SIC) code, the parameters of the industrial and commercial community which may be affected by the proposed section 8(c) rule. The purpose of this exercise is to examine all industrial categories to determine and list the SIC codes (see Appendix B to Reports Impact Analysis) for those who may manufacture, process, or distribute chemical substances or mixtures as defined in TSCA and may be subject to section 8(c). Under the TSCA definition, a chemical substance includes any naturally occuring substance or combination of substances, such as minerals or cotton. Those who manufacture chemical substances or mixtures, such as organic chemicals, may in large part be readily identifiable within the SIC codes 28 and 2911. However, additional manufacturers, as well as processors and distributors, are spread thoughout industry and commerce. Large segments of industry may include processors; however, in most of those segments, only a small percentage of the production employees can be expected to be involved in the processing of chemicals (as opposed to assembly work and other activities). While the list of industries and SIC codes is reasonably complete and comprehensive, exclusion of an SIC code from the list should not be construed to mean that persons in that code are not manufacturers, processors, or distributors of chemical substances or mixtures. Some SIC codes were eliminated from the list because there was no clear indication from the description in the *Standard Industrial Classification Manual* that the industry might manufacture or process any substances. Other SIC codes were excluded because the industries generally appeared to not be within the jurisdiction of TSCA. The selections were made without consulting industry, and it is expected that comments to the proposed rule and this analysis will improve and validate the selection criteria and result in a more comprehensive listing.

Purpose

This review was conducted to better estimate the potential impact of the proposed section 8(c) rule. Industry has provided estimates to EPA about the number of section 8(c) allegations that are now received annually in a manner that measures the number of allegations received from all sources by the number of industry production employees as follows:

Total Allegations Of All Sorts—Number of Production Employees

An estimate was derived from industry input which concludes that industry annually receives from any source 2–4 allegations for every 1000 production employees. The number of production employees thus becomes a common denominator to estimate the number of allegations that might be subject to recordkeeping and reporting under TSCA section 8(c). The purpose of this study is to estimate the number of production workers who could be expected to be involved in the manufacturing, processing, or wholesale distributing of chemical substances or mixtures.

Assumptions and Procedures

1. The provisions of section 8(c) are to be applied to *all* persons who manufacture, process, or distribute chemical substances or mixtures in commerce except retailers. This will include persons in the chemical and allied products industry; those who distribute those products in commerce; and industries outside the traditional "chemical industry" if their production activities involve the manufacture or processing of "chemical substancers" or "mixtures" as defined by TSCA. TSCA defines chemical substances as including naturally occurring substances such as metals or cotton. Many industrial segments will technically "process" under the definitions of TSCA, and those persons should be subject to the statutory provision for those chemical substances or mixtures which are processed. Persons who solely *use* (do not process) chemical substances or mixtures may generate section 8(c)-type allegations, which may be sent to and then kept by manufacturers, processors, or distributors of those substances or mixtures; but users are not subject to the section 8(c) recordkeeping and reporting provisions.

2. Since the SIC codes are structured around the article produced by the coded industry, we have drawn inferences about the operations involved in making the end product. Processors were selected by judging whether in some way production of the end product might regularly involve processing of chemicals, such as, at a minimum, applying a surface coating. Thus, while the manufacturers of transportation equipment are included on the list, those persons providing transportation services were excluded (SIC 40–48).

3. Industries can be separated into two groups: (a) Group 1, those primarily engaged in manufacturing or processing chemical substances or mixtures, all of whose production employees are expected to be involved in chemical activities, and (b) Group 2, those who may process or distribute chemical substances or mixtures, but only as a small part of their overall operation. Companies in Group 2 may be considered processors or distributors, yet the activities are diverse and chemical processing is expected to be incidental. Therefore, in this review only a portion of the employees were counted to equate their activities with production employees in Group 1. It was estimated that 10% of the employees in Group 2 may be involved in chemical processing during the regular performance of duties. The figure of 10% is very much an estimate of the potential numbers of similarly exposed production workers, and in some cases certain Group 2 industries should have *all* workers counted (e.g., textile mills). In other cases, fewer than 10% of the production workers should be counted. Given these limitations, the 10% figure can be considered a reasonable estimate which is an easily multiplied figure that commentors can consider and then provide more accurate information. This estimate is for the purposes of analyzing the impact of section 8(c) only, and may not apply to other rules under TSCA.

4. The figures for the numbers of production employees and establishments listed in Appendix B were drawn from data provided by the Bureau of Labor Statistics (BLS), DOL, *(Employment and Wages, First Quarter 1975,* PB–292 169, 1979). All employees listed in this BLS study are production workers and all establishments and employees are counted only once, according to the primary SIC code. The data are drawn from information submitted to each state unemployment insurance program. BLS considers these data to be a virtual census of all nonagricultural workers. While the data are drawn from January 1975, the figures are more current than the Department of Commerce *Census of Manufacturers* and most likely approximate the current numbers of establishments and production workers.

5. Due to the structure of the SIC codes, which is based on products not processes, additions to the SIC list were made if it appeared *possible* that the manufacture of those products might involve processing or handling substances according to the TSCA definitions. Since many of the industries may perform a small amount of related processing, only 10% of those workers are counted. Yet, for many large industries, such as automobile manufacturers, the study concluded that 10% may be an overestimate because of the large number of unrelated jobs. Furthermore, counting 100% of the workers in Group 1 probably is an overestimate. Yet, the figures offer a reasonable approximation of the number of employees with work comparable to that of production employees in the chemical industry, and can serve as the number of workers to be substituted in the formula for estimating section 8(c)-type allegations:

Number of allegations from all sources ÷ 1000 Production Workers

Also, the figures for the mining and wholesale trade codes (10–14, 50–51) were only available in 3-digit categories, and therefore include some 4-digit categories that would otherwise not be counted in the study (e.g., Mining Services).

Results

Examination of the *Standard Industrial Classification Manual* resulted in identifying the following groups:

(a) Group 1. 100% employee potential exposure
Number of SIC codes: 15 3-digit, 55 4-digit.
Number or establishments: 39,355.
Number of production workers: 3,174,951.

(b) Group 2. 10% employee potential exposure
Number of SIC codes: 24 3-digit, 308 4-digit.
Number of establishments: 543,075.
Number of production workers: 17,211,586.

The following equation estimates the number of U.S. production workers (Section 8(c) Worker Population) involved in chemical activities:

Group 1 + (Group 2)(0.10) = Section 8(c) Worker Population
3,174,951 + 1,721,159 = *4,896,110*

Appendix B—Report Impact Analysis

SIC Categories—100% Exposure

Group I

SIC code	Description	Number of reported units	Number of employees
101	Iron Ores	90	23,396
102	Copper Ores	144	43,473
103	Lead & Zinc Ores	98	7,989
104	Gold Ores & Silver Ore	259	3,953
105	Bauxite & Other Aluminum Ores.	18	468
106	Ferroalloy Ores, Except Vanadieum.	43	4,596
109	Miscellaneous Metal Ores	224	8,338
111	Anthracite	146	3,587
121	Bituminous Coal	3,523	197,452
141	Dimension Stone	265	3,597
142	Crushed & Broken Stone	1,498	40,367
144	Sand & Gravel	2,700	32,107
145	Clay, Ceramic and Refractory Minerals.	213	8,279
147	Chemical & Fertilizer Minerals.	202	24,897
149	Miscellaneous Nonmetallic Minerals, Except Fuels.	267	5,067
2261	Finishing Plants—Cotton	276	33,027
2262	Finishing Plants—Man-Made Fiber & Silk.	315	29,544
2269	Finishing Plants Textiles	225	14,502
2611	Pulp Mills	79	15,102
2621	Paper Mills, Except Bldg. Papermills.	433	173,536
2631	Paperboard Mills	237	63,785
2641	Paper Coating & Glazing	445	54,527
2812	Alkalies and Chlorine	73	23,476
2813	Industrial Gases	393	17,344
2816	Inorganic Pigments	115	13,713
2819	Industrial Inorganic Chemicals.	735	99,180
2821	Plastic Materials	590	83,400
2822	Synthetic Rubber	84	15,239
2823	Cellulosic Man-Made Fibers	30	25,076
2824	Synthetic Organic Fibers, Ex. Cellulosic.	76	93,109
2831	Biological Products	225	19,321
2833	Medicinal Chemicals	125	16,368
2841	Soap & Other Detergents	549	38,371
2842	Speciality Cleaning	980	28,060
2843	Surface Active Agents, Finishing Agents etc.	198	6,002
2844	Perfumes, Cosmetics & Other Toilet Preparations.	585	47,738
2851	Paints & Varnishes	1,497	62,861
2861	Gum & Wood Chemicals	139	5,650
2865	Cyclic Crudes & Cyclic Intermediates.	208	33,008
2869	Industrial Organic Chemicals	415	119,231
2873	Nitrogenous Fertilizers	206	12,315
2874	Phosphatic Fertilizers	139	15,444
2875	Fertilizers, Mixing Only	572	14,180
2891	Adhesives & Sealants	506	12,152
2893	Printing Ink	417	12,152
2895	Carbon Black	33	4,361
2899	Chemicals & Chemicals Preparations.	955	36,283
2911	Petroleum Refining	575	155,358
2951	Paving Mixtures & Blocks	625	10,225
2952	Asphalt Felts & Coating	215	16,619
2992	Lubricating Oils & Greases	308	8,023
2999	Products of Petroleum & Coal NEC..	45	2,146
3011	Tires & Inner Tubes	201	129,086
3021	Rubber & Plastic Footwear	102	30,936
3031	Reclaimed Rubber	22	767
3041	Rubber & Plastic Hose	100	18,451
3069	Fabricated Rubber	1,212	107,346
3079	Misc. Plastic Products	7,978	327,331
3111	Leather Tanning & Finishing	468	21,172
3241	Cement, Hydraulic	214	32,680
3274	Lime	106	327,331
3312	Blast Furnaces, Steel Works, & Rolling Mills.	468 477	21,172 507,079
3313	Electrometallurgical Products.	58	16,999
3331	Primary Smelting & Refining of Copper.	29	17,416
3332	Primary Smelting & Refining of Lead.	19	3,134
3333	Primary Smelting & Refining of Zinc.	15	6,424
3334	Primary Production of Aluminum.	50	32,962
3339	Primary Smelting & Refining of Non-Ferrous Metals NEC..	99	10,296
3471	Electroplating, Plating & Polishing.	3,414	54,491
3479	Coating Engraving & Allied Services.	1,478	28,132
	Total	39,335	3,174,951

SIC Categories—10% Exposure

Group II

SIC code	Description	Number of reported units	Number of employees
131	Crude Petroleum & Natural Gas Liquids.	6,325	145,846
132	Natural Gas	120	4,262
2074	Cottonseed Oil Mills	110	7,730
2075	Soybean Oil Mills	78	9,334
2076	Vegetable Oil Mills	44	2,220
2077	Animal & Marine Oil Mills	430	11,747
221	Broad Woven Fabric Mills, Cotton.	427	158,286
222	Broad Woven Fabric Mills, Man-made Fiber & Silk.	478	101,626
223	Broad Woven Fabric Mills, Wools Including Dying & Finishing.	211	21,520
224	Narrow Fabrics & Other Smallwares Mills.	449	23,199
225	Women's Full Length & Knee Length Hosiery.	264	33,341
2252	Hosiery, Except Women's Full & Knee Length.	401	28,897
2253	Knit Outerwear Mills	1,059	67,102
2254	Knit Underwear Mills	114	32,664
2257	Circular Knit Fabric Mills	376	31,023
2258	Warp Knit Fabric Mills	328	20,370
2259	Knitting Mills, NEC	85	4,458
2271	Woven Carpets & Pads	101	7,281
2272	Tufted Carpets & Rugs	407	43,086
2279	Carpets & Rugs, NEC	59	946
2281	Yarn Spinning Mills	401	73,839
2282	Yarn Texturizing	187	18,585
2283	Yarn Mills, Wool	115	11,488
2284	Thread Mills	79	10,093
2291	Felt Goods, except Woven Felts & Hats.	75	4,107
2292	Lace Goods	101	2,762
2293	Paddings & Upholstry Filling	127	5,726
2294	Processed Waste & Recovered Fiber.	169	6,116
2295	Coated Fiber	191	11,198
2296	Tire Cord & Fiber	29	11,893
2297	Nonwoven Fabrics	32	3,110
2298	Cordage & Twine	170	10,440
2299	Textile Goods, NEC.	137	9,903
2311	Men's & Youth's Suits & Coats.	754	92,378
2321	Men's Nightwear	836	111,349
2322	Men's Underwear	94	18,010
2323	Men's Neckwear	259	6,279
2327	Men's Trousers	658	82,552
2328	Men's Work Clothing	471	96,994
2329	Clothing, NEC	675	50,884
2331	Women's Blouses, Waists & Shirts.	884	45,742
2335	Women's Dresses	4,700	156,606
2337	Women's Suits & Skirts	1,577	56,962
2339	Women's NEC.	2,292	111,144
2341	Women's Underwear	841	72,179
2342	Brassieres & Girdles	322	34,188
2351	Millinery	153	2,831
2352	Hats & Caps	263	12,620
2361	Girls' Dresses, Blouses	475	24,611
2363	Girls' Coats & Suits	173	7,288
2369	Girls' Outerwear	432	32,162
2371	Fur Goods	772	4,072
2381	Dresses & Work Gloves	156	14,399
2384	Robes & Dressing Gowns	203	7,910
2385	Rain Coats	260	14,038
2386	Leather & Sheep Lined Clothing.	213	5,239
2387	Apparel, Belts	284	8,154
2389	Apparel, NEC	219	5,324
2391	Curtains & Draperies	1,219	24,523
2392	House Furnishings	1,092	37,400
2393	Textile Bags	210	7,918
2394	Canvas & Related Products	980	12,752
2395	Pleating, Decorative & Novelty Stitching.	933	11,854
2396	Automotive Trimmings	635	23,102
2397	Schiffli Machine Embroideries	256	2,952
2399	Fabricated Textile Products, NEC.	625	20,892
2411	Logging Camps	13,055	68,784
2421	Sawmills & Planing Mills	7,308	158,845
2426	Hardwood Dimension & Flooring Mills.	865	25,060
2429	Special Product Sawmills	516	5,713
2431	Millwork	2,472	56,821
2434	Wood Kitchen Cabinets	2,470	33,954
2435	Hardwood Veneer & Plywood	317	22,308
2436	Softwood Veneer & Plywood	245	35,898
2439	Wood Containers	488	6,685
2511	Wood Household Furniture	2,058	124,707
2512	Wood Household Furniture Upholstery.	1,514	80,226
2514	Metal Household Furniture	507	27,309
2515	Mattresses & Box Springs	1,046	31,156
2517	Wood Television, Radio Phonograph & Sewing Machine Cabinets.	113	10,948
2519	Household Furniture NEC.	146	2,945
2521	Wood Office Furniture	202	11,903
2522	Metal Office Furniture	208	30,159
2531	Public Building & Related Furniture.	372	24,074
2541	Wood Partitions, Shelving, Lockers, etc..	537	26,343
2542	Metal Partitions & Shelving	537	24,709
2591	Draping Hardware, Window Blinds & Shades.	561	13,147
2599	Furniture & Fixtures NEC.	282	9,764
2642	Envelopes	260	23,457

SIC code	Description	Number of reported units	Number of employees
2643	Bags, Except Textile Bags	576	46,475
2645	Die-Cut Paper Paperboard & Cardboard.	423	16,869
2646	Pressed & Molded Pulp Goods.	54	4,535
2647	Sanitary Paper Products	102	19,344
2648	Stationery, Tablets and Related Products.	88	5,707
2649	Converted Paper and Paperboard NEC..	524	28,302
2651	Folding Paperboard Boxes	587	41,827
2652	Set-Up Paperboard Boxes	340	12,916
2653	Corrugated & Solid Fiber Boxes.	1,349	95,713
2654	Sanitary Food Containers	180	25,833
2655	Fiber Cans, Tubes, Drums & Similar Products.	299	18,643
2661	Building Paper & Building Board Mills.	108	11,633
2711	Newspapers: Publishing, Publishing & Printing.	8,527	382,066
2721	Periodicals, Publishing	2,832	69,081
2731	Books, Publishing & Printing	1,585	67,643
2732	Book Printing	215	27,681
2741	Misc. Publishing	2,276	38,231
2751	Commercial Printing	11,489	164,256
2752	Commercial Printing Lithographic.	9,229	168,521
2753	Engraving & Plate Printing	595	11,091
2754	Commercial Printing Gravure.	124	8,350
2879	Pesticides & Agricultural Chemicals NEC.	357	22,027
3131	Boot & Shoe Cut Stock	263	9,705
3142	House Slippers	102	8,994
3143	Men's Footwear	241	59,111
3144	Women's Footwear	324	68,434
3149	Footwear, except Rubber NEC.	243	22,993
3151	Leather Gloves & Mittens	108	4,817
3161	Luggage	277	14,176
3171	Women's Handbags & Purses.	442	16,926
3172	Personal Leather Goods Ex. Women's Purses.	308	10,835
3199	Leather Goods, NEC	405	8,143
3211	Flat Glass	86	18,164
3221	Glass Containers	139	69,527
3229	Pressed & Blown Glass	327	56,500
3231	Glass Products	883	35,903
3251	Brick & Structural Clay Tile	371	19,045
3253	Ceramic Wall & Floor Tile	98	8,990
3255	Clay Refractories	157	13,579
3259	Structural Clay Products	124	6,478
3261	Vitreous China Plumbing Fixtures.	80	8,817
3262	Vitreous China Table and Kitchen Articles.	21	5,341
3263	Fine Earthenware	12	5,124
3264	Porcelain Electrical Supplies	79	12,115
3269	Pottery Products NEC	582	13,370
3271	Concrete Brick & Block	1,388	21,952
3272	Concrete Products	3,552	66,165
3273	Ready-Mixed Concrete	4,212	75,900
3275	Gypsum Products	128	13,709
3281	Cut Stone & Stone Products	937	12,435
3291	Abrasive Products	366	26,318
3292	Asbestos Products	165	24,487
3293	Gaskets, Packing & Sealing	382	25,409
3295	Minerals & Earth, Ground	455	14,449
3296	Mineral Wools	158	23,120
3297	Nonclay Refractories	98	11,237
3299	Nonmetallic Mineral Products	417	5,711
3315	Steel Wire, Nails	192	21,250
3316	Cold Rolled Steel Sheet Strip & Bars.	184	18,843
3317	Steel Pipe & Tubes	208	29,414
3321	Gray Iron Foundries	963	156,225
3322	Malleable Iron Foundries	72	23,186
3324	Steel Investment Foundries	58	11,306
3325	Steel Foundries NEC	242	57,309
3341	Secondary Smelting & Refining of Nonferrous Metals.	376	19,309
3351	Rolling, Drawing & Extruding of Copper.	158	30,632
3353	Aluminum Sheet, Plate, & Foil.	85	30,350
3354	Aluminum Extruded Products.	163	28,981
3355	Aluminum Rolling & Drawing NEC.	24	5,252
3356	Rolling, Drawing & Extruding of Nonferrous Metals.	177	18,762
3357	Drawing & Insulating of Nonferrous Wire.	383	82,609
3361	Aluminum Foundries	968	45,656
3362	Brass, Bronze, Copper, Copper Base Alloy Foundries.	560	20,170
3369	Nonferrous Foundries NEC	425	16,006
3398	Metal Heat Treating	449	10,911
3399	Primary Metal Products NEC.	237	8,749
3411	Metal Cans	421	69,820
3412	Metal Shipping Barrels Drums etc.	167	12,237
3421	Cuttery	148	15,348
3423	Hand & Edge Tools, Ex. Tools.	743	49,821
3425	Hand Saw & Saw Blades	119	7,655
3429	Hardware NEC	1,073	85,480
3431	Enameled Iron Metal Sanitary Ware.	133	9,475
3432	Plumbing Fixture Fittings & Trim.	243	20,417
3433	Heating Equipment Except Electric Warm Air Furnace.	379	29,217
3441	Fabricated Structural Metal	2,078	106,912
3442	Metal Doors, Sash, Frames, etc.	1,882	62,464
3443	Fabricated Plate Work	1,689	149,457
3444	Sheet Metal Work	3,696	84,800
3446	Architectural & Ornamental Metal Work.	2,000	30,665
3448	Prefabricated Metal Building & Components.	448	18,456
3449	Misc. Metal Work	333	9,734
3451	Screw Machine Products	1,881	49,076
3452	Bolts, Screws, Rivets & Washers.	721	56,526
3462	Metal Forgings & Stampings	497	55,621
3463	Nonferrous	33	4,861
3465	Automotive Stampings	294	68,712
3466	Crowns & Closures	37	5,057
3469	Metal Stampings NEC	2,260	110,831
3493	Steel Springs Except Wire	163	7,962
3494	Valves & Pipe Fittings	783	92,307
3495	Wire Springs	258	13,646
3496	Misc. Fabricated Wire Products.	1,201	46,026
3497	Metal Foil & Leaf	48	2,461
3498	Fabricated Pipe	479	23,912
3499	Fabricated Metal Products, NEC.	1,238	40,438
3511	Steam, Gas, & Hydraulic Turbines & Generators.	83	49,238
3519	Internal Combustion Engines.	155	75,792
3523	Farm Machinery & Equipment.	1,624	159,829
3524	Garden Tractors & Garden Equipment.	135	20,556
3531	Construction Machinery & Equipment.	701	153,975
3532	Mining Machinery & Equipment.	254	29,596
3533	Oil Field Machinery & Equipment.	311	57,947
3534	Elevators & Moving Stairways.	167	14,647
3535	Conveyors & Conveying Equipment.	504	28,723
3536	Hoists	252	28,806
3537	Industrial Trucks, Tractors, Trailers.	398	34,383
3541	Machine Tools, Metal Cutting	878	70,768
3542	Machine Tools, Metal Forming.	339	28,055
3544	Special Dies & Tools	7,289	119,176
3545	Machine Tool Accessories	1,661	59,678
3546	Power Driven Hard Tools	127	22,995
3547	Rolling Mills Machinery & Equipment.	56	14,469
3549	Metal Working Machinery NEC.	199	13,946
3551	Food Products Machinery	751	43,823
3552	Textile Machinery	621	36,178
3553	Wood Working Machinery	296	13,150
3554	Paper Industries Machinery	211	18,928
3555	Printing Trades Machinery & Equipment.	619	30,315
3559	Special Industry Machinery, NEC.	1,051	57,583
3561	Pumps & Pumping Equipment.	506	57,010
3562	Ball & Roller Bearings	183	59,279
3563	Air & Gas Compressors	143	28,714
3564	Blowers & Exhaust Fans	502	34,389
3565	Industrial Patterns	968	10,002
3566	Speed Changers & Industrial High Speed Drives.	267	25,113
3567	Industrial Process Furnaces & Ovens.	327	19,869
3568	Mechanical Power Transmission Engines.	160	24,083
3569	General Ind. Machinery & Equipment.	836	46,211
3572	Typewriters	32	17,975
3573	Electronic Computing & Equipment.	738	219,277
3574	Calculating and Accounting Machines.	68	31,913
3576	Scales and Balances, Except Laboratory.	88	7,254
3579	Office Machines NEC	199	25,448
3581	Automatic Merchandising Machines.	101	8,355
3582	Commercial Laundry, & Dry Cleaning.	91	5,764
3585	Air Conditioning & Industrial-Commercial Refrigeration Equipment.	658	110,564
3586	Measuring and Dispersing Pumps.	29	5,715
3589	Service Industry Machines	692	31,868
3592	Carburetors, Pistons, Piston Rings, and Valves.	218	30,947
3599	Machinery, except Electrical NEC.	14,409	202,011
3612	Power, Distribution, & Specialty Transformers.	383	59,474
3613	Switchgear and Switchboard Apparatus.	588	69,954
3621	Motors and Generators	437	117,906
3622	Industrial Controls	623	62,587
3623	Welding Apparatus, Electric	157	17,528
3624	Carbon and Graphite Products.	76	14,233
3629	Electrical Industrial Apparatus, NEC.	148	11,811
3631	Household Cooking Equipment.	85	18,704
3632	Household Refrigerators & Home and Farm Freezers.	54	34,278
3633	Household Laundry Equipment.	36	20,100
3634	Electric Housewares & Fans	286	46,188
3635	Household Vacuum Cleaners	32	9,068
3636	Sewing Machines	84	8,385
3639	Household Appliances NEC	87	14,793
3641	Electric Lamps	251	39,026
3643	Current Carrying Wiring Devices.	528	73,622
3644	Noncurrent Carrying Wiring Devices.	204	22,382
3645	Residential Electric Lighting Fixtures.	566	19,684
3646	Commercial, Industrial, Institutional Electrical Lighting Fixtures.	191	15,376
3647	Vehicular Lighting Equipment	50	12,603
3648	Lighting Equipment NEC	137	6,294
3651	Radio & TV Receiving Sets	525	87,481
3652	Phono Records & Magnetic Tape.	624	22,187
3661	Telephone & Telegraph Apparatus.	303	164,121
3662	Radio & TV Transmitting Equipment.	1,566	322,595
3671	Radio & TV Receiving Tubes.	40	12,808
3672	Cathode Ray Picture Tubes	67	11,968
3673	Transmitting, Industrial & Special Purpose Electron Tubes.	60	17,213
3674	Semiconductors & Related Devices.	497	126,549
3675	Electronic Capacitors	102	19,181
3676	Resistors, for Electronic Applications.	59	8,344
3677	Electronic Coils, Transformers, etc.	274	16,294
3678	Connectors, for Electronic Applicators.	38	2,843

SIC code	Description	Number of reported units	Number of employees
3679	Electronic Components NEC.	2,465	140,145
3691	Storage Batteries	241	25,236
3692	Primary Batteries, Dry and Wet.	72	12,138
3693	X-Ray Equipment	142	17,081
3694	Electrical Equipment for Internal Combustion Engines.	341	62,373
3699	Electrical Equipment NEC	292	11,663
3711	Motor Vehicles and Passenger Car Bodies.	334	347,584
3713	Truck & Bus Bodies	730	45,593
3714	Motor Vehicle Parts & Accessories.	1,719	361,418
3715	Truck Trailers	366	21,856
3721	Aircraft	222	305,564
3724	Aircraft Engines	246	133,864
3728	Aircraft Parts	1,046	98,716
3731	Ship Building & Repair	456	165,901
3732	Boat Building & Repair	1,703	38,401
3743	Railroad Equipment	145	60,482
3751	Motorcycles & Bicycles	250	12,277
3792	Travel Trailers & Campers	1,029	27,820
3799	Transportation Equipment	363	9,083
3811	Engineering Laboratory, Scientific Equipment.	718	65,608
3822	Automatic Controls for Regulating Commercial & Residential Environments.	252	37,623
3824	Totalizing Fluid Meters & Counting Devices.	124	15,017
3825	Instruments for Measuring & Testing Electricity & Electrical Signals.	509	64,062
3829	Measuring & Controlling Devices NEC.	328	17,758
3832	Optical Instruments & Lenses	416	22,495
3841	Surgical & Medical Instruments & Appliances.	542	42,227
3842	Surgical Supplies & Appliances.	1,002	56,178
3843	Dental Equipment	376	15,056
3851	Ophthalmic Equipment	933	37,817
3861	Photo Equipment & Supplies.	682	125,209
3873	Watches, Clocks, Clockwork & Supplies.	237	32,628
3911	Jewelry, Precious Metal	1,812	31,315
3914	Silverware, Plated Ware, Stainless Steel.	242	11,528
3915	Jewelers Materials	577	8,826
3931	Musical Instruments	361	25,177
3942	Dolls	262	6,394
3944	Games, Toys, & Children's Vehicles.	696	39,178
3949	Sporting and Athletic Goods, NEC.	1,547	62,662
3951	Pens & Mechanical Pencils	111	9,788
3952	Lead Pencils	154	8,285
3953	Marking Devices	556	8,340
3955	Carbon Paper & Inked Ribbons.	103	4,985
3961	Costume Jewelry	1,341	28,786
3962	Feathers, Plumes, Artificial Trees & Flowers.	291	4,926
3963	Buttons	197	3,849
3964	Needles, Pins, Hooks, & Eyes.	288	16,384
3991	Brooms & Brushes	437	15,899
3993	Signs & Advertising Displays.	2,662	41,282
3995	Burial Caskets	420	13,633
3996	Linoleum, Asphalted-Felt-Base Floor Covers.	21	8,134
3999	Manufacturing Industry	2,158	50,145
492	Gas Production & Distribution	1,837	159,390
501	Automotive Vehicles & Automotive Equipment.	27,650	367,253
502	Furniture & Home Furnishings.	9,455	85,967
503	Lumber & Construction Materials.	13,484	145,810
504	Sporting Goods, Toys, & Hobby Goods.	5,002	55,151
505	Metals & Minerals, Except Petroleum.	7,891	126,288
506	Electrical Goods	23,934	356,356
507	Hardware, Plumbing, & Heating Equipment.	18,378	206,792
508	Machinery, Equipment & Supplies.	79,375	1,002,867
509	Miscellaneous Durable Goods.	22,146	193,205
511	Paper & Paper Goods	8,796	116,251
513	Apparel, Piece Goods, & Notions.	17,291	154,027
516	Chemicals & Allied Products	9,626	109,609
517	Petroleum	16,885	225,181
519	Miscellaneous Nondurable Goods.	33,341	313,787
	Total	543,075	17,211,586

[FR Doc. 80-20490 Filed 7-10-80; 8:45 am]

BILLING CODE 6560-01-M

federal register

Friday
July 11, 1980

Part IV

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Construction Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

None.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State

Connecticut:
CT79–2010: April 6, 1979.
CT79–2011: April 6, 1979.
Florida:
FL79–1110: July 20, 1979.
FL80–1064: April 25, 1980.
Louisiana:
LA80–4026: June 13, 1980.
LA80–4039: May 23, 1980.
Maryland:
MD79–3031: November 30, 1979.
Missouri:
MO80–4040: June 13, 1980.
Montana:
MT80–5120: June 27, 1980.
MT80–5121: June 27, 1980.
MT80–5122: June 27, 1980.
New Mexico:
NM79–4103: November 2, 1979.
NM79–4104: November 2, 1979.
Pennsylvania:
PA80–3025: April 11, 1980.
PA80–3029: April 25, 1980.
PA80–3038: May 23, 1980.
South Carolina:
SC80–1047: January 25, 1980.
Texas:
TX80–4001: January 4, 1980.
TX80–4003: January 4, 1980.
TX80–4004: January 4, 1980.
TX80–4006: January 4, 1980.
TX80–4028: April 25, 1980.
TX80–4031: June 6, 1980.
TX80–4033: May 16, 1980.
TX80–4034: June 6, 1980.
TX80–4035: June 20, 1980.
TX80–4036: June 20, 1980.
TX80–4037: May 16, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Michigan
MI80–2017(MI80–2053): March 21, 1980.
Ohio
OH79–2064(OH80–2048): July 6, 1979.
OH78–2148(OH80–2024): November 13, 1978.

Cancellation of General Wage Determination Decisions

The general wage decisions listed below are cancelled. Agencies with construction projects pending to which one of the cancelled decisions would have been applicable should utilize the project determination procedure by submitting Form SF–308. See Regulations Part 1 29 CFR 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.7(b)(2), the incorporation of one of the cancelled decisions in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

IN77–2070—Grant County, Indiana dated May 13, 1977 in 42 FR 24555—Residential Construction
IN77–2025—Miami County, Indiana dated February 18, 1977 in 42 FR 10198—Residential Construction
IN77–2093—Bartholomew County, Indiana dated May 27, 1977 in 42 FR 27551—Residential Construction
IN77–2012—Jackson County, Indiana dated February 11, 1977 in 42 FR 8913—Residential Construction
IN77–2014—Johnson County, Indiana dated February 11, 1977 in 42 FR 8914—Residential Construction
IN77–2096—Lawrence County, Indiana dated May 27, 1977 in 42 FR 27552—Residential Construction

Signed at Washington, D.C. this 3rd day of July 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATION PAGE 1

DECISION NO. CT79-2010 - MOD. #12 (44 FR 20913 - April 6, 1979) Fairfield, Litchfield & Windham Counties, Connecticut	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers (Heavy & Highway Construction):					
Greenwich	$10.65	.75	.95		a
Darien & Stamford	11.32	.80	.25		a
Except the Towns of Darien, Greenwich and Stamford	10.90	.75	.75		a
Carpenters (Heavy & Highway Construction):					
Out of the Hartford area in Fairfield Co. Litchfield Co., and Windham Co.	11.70	.90	.65		b
Ironworkers	14.75	1.03	1.45		.10

FOOTNOTES:

a. Percentage of wage wages

b. $1.00 a year not to exceed 10 cents an hour

MODIFICATION PAGE 2

DECISION NO. CT79-2010 - Cont'd	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
CLASS 1	$13.70	1.10	1.10	a	.15
CLASS 2	13.51	1.10	1.10	a	.15
CLASS 3	13.11	1.10	1.10	a	.15
CLASS 4	12.87	1.10	1.10	a	.15
CLASS 5	12.68	1.10	1.10	a	.15
CLASS 6	12.45	1.10	1.10	a	.15
CLASS 7	12.19	1.10	1.10	a	.15
CLASS 8	12.10	1.10	1.10	a	.15
CLASS 9	11.22	1.10	1.10	a	.15
CLASS 10	11.66	1.10	1.10	a	.15
CLASS 11	11.09	1.10	1.10	a	.15
CLASS 12	10.65	1.10	1.10	a	.15
CLASS 13	11.58	1.10	1.10	a	.15
Crane with 150' Boom - $.25 extra					
Crane with 200' boom - $.50 extra					

CLASS 1 - Erecting and handling Structural Steel; Front End Loader (7 cy. or over)
CLASS 2 - Piledriver; Power Shovel and Crane; Dragline; Gradall, Trenching Machine; Lighter Derrick; Paver (concrete), Derrick (stiff leg and guy); Steel Pile Sheeting; Koehring Loader (Skooper); Master Mechanic
CLASS 3 - Drill (Joy heavy weight champion or equivalent); Side Boom; Loader (Euclid); Mucking Machine; Pumpcrete; Rock and Earth Boring Machine; Post Hole Digger; & Hammer (vibratory); Central Mix; Combination Hole & Loader (over ½ yd.)
CLASS 4 - Asphalt Spreader
CLASS 5 - Front End Loader (3 yds. or over); Grader; Power Stone Spreader; Combination Hoe and Loader
CLASS 6 - Asphalt Roller; Bulldozer; Carryall; Maintenance Engineer; Concrete Mixer (5 bags and over); Welder
CLASS 7 - Front End Loader (under 3 yds.); Roller; Power Chipper; Fork Lift; Finishing Machine; Asphalt Plant; Power Pavement Breaker; Dinky Machine
CLASS 8 - Compressors; Pump
CLASS 9 - Fireman (high pressure)
CLASS 10 - Well Point System
CLASS 11 - Compressor Battery
CLASS 12 - Oiler
CLASS 13 - Batch Plant; Bulk Cement Plant

DECISION NO. CT79-2010 - Cont'd	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Survey Crew					
Chief of Party	$11.65	1.10	1.10	a	.15
Ass't Chief of Party	10.81	1.10	1.10	a	.15
Instrument Man	9.97	1.10	1.10	a	.15
Rodman & Chainman	7.43	1.10	1.10	a	.15
TRUCK DRIVERS (Building, Heavy and Highway Construction)					
CLASS 1	9.26	1.04	1.10	a	
CLASS 2	9.36	1.04	1.10	a	
CLASS 3	9.46	1.04	1.10	a	
CLASS 4	9.41	1.04	1.10	a	
CLASS 5	9.51	1.04	1.10	a	
CLASS 6	9.56	1.04	1.10	a	
CLASS 7	9.51	1.04	1.10	a	

CLASS 1 - Two Axle Trucks; Helpers
CLASS 2 - Three Axle Trucks; Two Axle Ready Mix
CLASS 3 - Four Axle Trucks; Heavy Duty Trailer-up to 40 Tons
CLASS 4 - Three Axle Ready-Mix
CLASS 5 - Four Axle Ready-Mix; Specialized Earth Moving Equipment other than conventional Type on-the-road Trucks and Semi-Trailer (including Euclids)
CLASS 6 - Heavy Duty Trailer-40 Tons and over
CLASS 7 - Heavy Duty Trailer up to 40 Tons

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day & F-Christmas Day

FOOTNOTE:
a. 7 Paid Holidays: A through F and Good Friday

DECISION NO. CT79-2011 - MOD. #15 (44 FR20921 - April 6, 1979) Hartford, Middlesex, New Haven, New London, and Tolland Counties, Connecticut	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers (Heavy and Highway Construction)	$10.90	.75	.75		
Carpenters (Heavy and Highway Construction)	11.70	.90	.65		
Ironworkers	14.75	1.03	1.45		.10

DECISION NO. CT79-2011 Cont'd	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: (HEAVY & HIGHWAY CONSTRUCTION)					
CLASS 1	$13.70	1.10	1.10	a	.15
CLASS 2	13.51	1.10	1.10	a	.15
CLASS 3	13.11	1.10	1.10	a	.15
CLASS 4	12.87	1.10	1.10	a	.15
CLASS 5	12.68	1.10	1.10	a	.15
CLASS 6	12.45	1.10	1.10	a	1.5
CLASS 7	12.19	1.10	1.10	a	.15
CLASS 8	12.10	1.10	1.10	a	.15
CLASS 9	11.22	1.10	1.10	a	.15
CLASS 10	11.66	1.10	1.10	a	.15
CLASS 11	11.09	1.10	1.10	a	.15
CLASS 12	10.65	1.10	1.10	a	.15
CLASS 13	11.58	1.10	1.10	a	.15
Crane with 150' boom - $.25 extra					
Crane with 200 boom - $.50 extra					

CLASS 1 - Erecting and handling Structural Steel; Front End Loader (7 cy. or over)
CLASS 2 - Piledriver; Power shovel and Crane; Dragline; Gradall, Trenching Machine; Lighter Derrick; Paver (concrete), Derrick (stiff leg and guy); Steel Pile Sheeting; Koehring Loader (Skooper); Master Mechanic
CLASS 3 - Drill (Joy heavy weight champion or equivalent); Side Boom; Loader (Euclid); Mucking Machine; Pumpcrete; Rock and Earth Boring Machine; Post Hole Digger; & Hammer (vibratory); Central Mix; Combination Hole & Loader (over ¼ yd.)
CLASS 4 - Asphalt
CLASS 5 - Front End Loader (3 yds. or over); Grader; Power Stone Spreader; Combination Hoe and Loader
CLASS 6 - Asphalt Roller; Bulldozer; Carryall; Maintenance Engineer; Concrete Mixer (5 bags and over); Welder
CLASS 7 - Front End Loader (under 3 yds.); Roller Power Chipper; Fork Lift; Finishing Machine; Asphalt Plant; Power Pavement Breaker; Dinky Machine
CLASS 8 - Compressors; Pump
CLASS 9 - Fireman (high pressure)
CLASS 10 - Well Point System
CLASS 11 - Compressor Battery
CLASS 12 - Oiler
CLASS 13 - Batch Plant; Bulk Cement Plant

DECISION NO. CT79-2011 - Cont'd	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Survey crew					
Chief of Party	11.65	1.10	1.10	a	.15
Ass't of Chief of Party	10.81	1.10	1.10	a	.15
Instrument Man	9.97	1.10	1.10	a	.15
Rodman & Chain man	7.43	1.10	1.10	a	.15
TRUCK DRIVERS (Building, Heavy & Highway Construction)					
Class 1	9.26	1.04	1.10	a	
Class 2	9.36	1.04	1.10	a	
Class 3	9.46	1.04	1.10	a	
Class 4	9.41	1.04	1.10	a	
Class 5	9.51	1.04	1.10	a	
Class 6	9.46	1.04	1.10	a	
Class 7	9.56	1.04	1.10	a	

CLASS 1 - Two Axle Trucks; Helpers
CLASS 2 - Three Axle Trucks; Two Axle Ready Mix
CLASS 3 - Four Axle Trucks; Heavy Duty Trailer-up to 40 Tons
CLASS 4 - Three Axle Ready-Mix
CLASS 5 - Four Axle Ready-Mix; Specialized Earth Moving Equipment other htan conventional Type on-the-road Trucks and semi-Trailer (including Euclids)
CLASS 6 - Heavy Duty Trailer-40 Tons and over
CLASS 7 - Heavy Duty Trailer up to 40 Tons

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day & F-Christmas Day

FOOTNOTE:
a. 7 Paid Holidays: A through F and Good Friday

DECISION NO. FL79-1110- Mod. #5 (44 FR 42858 - July 20, 1979) Dade County, Florida	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters	10.60	.90	.55		.08
Power Equipment Operators					
GROUP A	12.40	.50	.45		.05
GROUP B	11.58	.50	.45		.05
GROUP C	10.52	.50	.45		.05
GROUP D	9.65	.50	.45		.05
GROUP E	8.49	.50	.45		.05
DECISION NO. FL80-1064 - Mod. #1 (45 FR 28060 - April 25, 1980) Broward County, Florida					
Change:					
Plumbers; Pipefitters:					
Small Commercial (Office bldgs. of 1 or 2 fixtures; and restarts):	9.75	.60	.50		.15
All other Work	12.45	.60	.80		.15

DECISION NO. LA 80-4026 - MOD. #1 (45 FR 40438 - June 13,1980 Statewide Louisiana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Bricklayers & stonemasons:					
Zone 1	$12.30	.80	1.15		.31
Carpenters:					
Zone 4:					
Carpenters & piledrivermen	12.35	.50	.60		.06
Zone 7:					
Carpenters & soft floor layers	11.10				
Millwrights	11.85				
Piledrivermen	11.60				
Zone 9:					
Carpenters & soft floor layers	11.10				
Millwrights	11.85				
Piledrivermen	11.60				
Zone 10:					
Carpenters & soft floor layers	11.10	.65	.40		.10
Millwrights	12.00	.65	.40		.10
Piledrivermen	11.60	.65	.40		.10
Cement masons:					
Zone 4	11.555	.69	.40		.09
Electricians:					
Zone 2:					
Electricians	12.80	.45	3%		.02
Cable splicers	13.30	.45	3%		.02
Ironworkers:					
Zone 6	12.88	.60	.65		.05
Laborers:					
Zone 6 - Group 1	8.90	.30	.27		.05
Group 2	9.00	.30	.27		.05
Group 3	9.15	.30	.27		.05
Marble, tile & terrazzo workers & finishers:					
Zone 2 - Tile setters	9.30	.48	.67		.02

DECISION NO. LA80-4026(CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Zone 2 - Group 1	$10.35		.25		.08
Group 2	11.52		.25		.08
Zone 5 - Group 1	9.95				
Group 2	10.45				
Group 3	10.95				
Zone 6 - Painters, tape & float, vinyl & paperhangers	10.60	.40	.30		.05
Plasterers:					
Zone 2	10.50				.01
Zone 4	12.15				.01
Roofers:					
Zone 3:					
Roofers	9.96	.60	.70		.04
Roofer helpers does not use the tools of the trade in removing & disposing of old roofing, stocking & unloading material, hauling materials to the journeymen & sweeping	6.14	.60	.70		.04
Zone 4: Roofers	9.70		.30		
Kettlemen	8.35		.30		
Sheet metal workers:					
Zone 4	12.09	3%+.69	.50		.19
Sprinkler fitters	12.80	.85	1.20		.08
OMIT:					
All rates & classifications for Zone 8 Painters					
ADD:					
Painters:					
Zone 8 - painters	9.55		.25		.08

DECISION NO. LA80-4039 - MOD #1 (45 FR 35136 - May 23, 1980) Bossier, Caddo & Calcasieu Parishes, Louisiana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Elevator Constructors:					
Bossier & Caddo Parishes:					
Mechanics	11.66	1.195	.82	4%+a+b	.035
Helpers	70% JR	1.195	.82	4%+a+b	.035
Ironworkers:					
Calcasieu Parish	12.88	.60	.65		.05
Painters:					
Bossier & Caddo Parishes:					
Painters, tape & float, vinyl & paperhangers	10.60	.40	.30		.05
Plumbers & Pipefitters:					
Calcasieu Parish	13.73	.67	.72		.08
Sheet Metal Workers:					
Bossier & Caddo Parishes	7.74	3%+.67			.08
Sprinkler fitters	12.80	.85	1.20		.08
Tile setters:					
Calcasieu Parish	9.30	.48	.67		.02

DECISION NO. MD79-3031-Mod. # 5
(44 R69110- November 30, 1979)
Counties of Anne Arundel (excluding the D.C. Training School), Baltimore, Baltimore City Maryland, and for Heavy Construction Projects in Harford and Howard Counties, Maryland

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$11.95	.85	.95		.02
Bricklayers	12.13	.90	.75		.07
Electricians					
Zone 1 - From Baltimore City Hall to 25 miles	12.40	.80	3% + 1.20		.5%
Zone 2 - Over 25 miles to 45 miles from Baltimore City Hall	12.65	.80	3% + 1.20		.5%
Zone 3 - Over 45 miles from Baltimore City Hall	12.90	.80	3% + 1.20		.5%
Line Construction:					
Zone 1 - From Baltimore City Hall to 25 miles:					
Linemen, cable splicers, digging and equipment operator	13.70	.70	3%		
Winch trucks & trucks with pole or steel handling	9.18	.70	3%		
Trucks without winch	8.56	.70	3%		
Groundmen	8.63	.70	3%		
Zone 2 - 25 to 45 miles from Baltimore City Hall:					
Linemen, cable splicers, digging and equipment operator	13.95	.70	3%		
Winch trucks & trucks with pole or steel handling	9.43	.70	3%		
Truck without winch	8.81	.70	3%		
Groundmen	8.88	.70	3%		
Zone 3 - Over 45 miles from Baltimore City Hall					
Linemen, cable splicers, digging and equipment operator	14.20	.70	3%		
Winch trucks & trucks with pole or steel handling	9.68	.70	3%		
Truck without winch	9.06	.70	3%		
Groundmen	9.13	.70	3%		
Plasterers	11.60	.60	.50		
Sprinkler fitters (Baltimore City to within a 10 mile radus)	13.40	.85	1.20		.05
Tile and Terrazzo Workers	10.01	.90	.50		.04

DECISION #MO80-4040 - Mod. #2
(45 FR 40418 - June 13, 1980)
Pulaski County, Missouri

Change:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Brush & roller	$10.25	1.00	.70	.50	
Taping, paperhanging & floor work	10.75	1.00	.70	.50	
Spray, structural steel and sandblasting	11.50	1.00	.70	.50	

MODIFICATION PAGE 13

DECISION #MT80-5120 Mod # 1
(45 FR 43598 - June 27, 1980)
STATEWIDE, MONTANA

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Area 1	$14.35	.70	.50+3%		½%
Area 2					
Electricians	14.22	.70	.50+3%		½%
Cable Splicers	14.67	.70	.50+3%		½%
Area 4	13.20	.70	.50+3%		½%
Area 6	11.47	.70	.50+3%		½%
Area 7					
Electricians	13.65	.70	.50+3%		½%
Cable Splicers	14.33	.70	.50+3%		½%
Area 8	12.70	.70	.50+3%		½%
Area 9	12.30	.70	.50+3%		½%
LABORERS:					
(See Attached)					
LINE CONSTRUCTION:					
(Change wording in 2nd jurisdiction from Remaining Counties to: Statewide, except Flathead, Lake, and Lincoln Counties.)					
Groundman	9.23	.45	.50+3%		½%
PAINTERS:					
(Jurisdiction of Area 1 and Area 5 should be combined to form Area 1.)					
Area 1 (fringe only)		.51			
Area 4					
Brush	10.99	.69	.40		1%
Paperhanger, Brush on Steel	11.49	.69	.40		1%
Spraying; Sandblasting	13.24	.69	.40		1%

MODIFICATION PAGE 14

DECISION #MT80-5120 Mod #1 (cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
GROUP 1	$ 9.30	.70	.60	.20	.05
GROUP 2	9.96	.70	.60	.20	.05
GROUP 3	10.10	.70	.60	.20	.05
GROUP 4	10.80	.70	.60	.20	.05

GROUP 1: Axeman; Carpenter Tender; Car and Truck Loaders, Scissorman; Chuck Tender and Nipper (above ground); Cosmolene Applying and Removing; Dumpman (Spotter); Fence Erector and Installer (includes the installation and errection of fences, guard rails, median rails, reference posts, right-of-way markers and guide posts); Form Stripper; General Laborer - Heavy Highway, Highway Bridge and Structure, Crusher and Batch Plant Laborers; Heater Tender (not covered by joint board decision - such as radiant type of butane fire, without blowers or fans - General Laborers scale); Landscape Laborer; Riprap Helper; Stake Jumper for Equipment; Sandblaster Tail Hoseman, Pot Tender; Sod Cutter, Hand Operated (General Laborers); Tool Checker; Tool Houseman.

GROUP 2: Burning Bar; Cement Mason Tender; Caisson Workers (Free Air); Cement Handlers; Choker Setter; Concrete Laborers (wet or dry) Bucketmen and Signalmen; Curb Machine; Dumpman (Grade Man); Form Setter; Hand Faller; Jackhammer, Pavement Breaker, Wagon Driller, Concrete Vibrator, Mechanical Tamper Vibrating Roller, Hand Steered and Other Power Tools; Nozzleman - Air Water, Gunite and Placo Machine; Concrete or Asphalt Saws; Pipelayer (all types) Laser Equipment Operator; Pipewrapper; Posthole Digger (Power Auger); Power Saw (Bucking); Powderman Helper; Power Driven Wheelbarrow; Rigger; Riprapper; Spike Driver, Single or Dual or Hand; Switchman; Tar Pot Operator.

GROUP 3: Asphalt Raker; Concrete Vibrator (5" and over); Drills, Air Tract Self Propelled, Cat or Truck mounted Air Operated Drills; Drills, Air Tract with Dual Masts; Drills, Air Tract, Self Propelled Mustang Type and similar; Equipment Handler; High Scaler; High Pressure Machine Nozzleman; Power Saw (Falling); Sandblaster.

GROUP 4: Core Drill Operator; Grade Setter; Powderman; Welder, Cutting Torch and Air Arc.

DECISION #MT80-5121 Mod #1
(45 FR 43608 - June 27, 1980
STATEWIDE, MONTANA

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Carpenters:					
Area 9					
Carpenters	$11.38	.85	1.00		.04
Millwrights and Piledrivermen	11.88	.85	1.00		.04
Electricians:					
Area 2					
Electricians	14.22	.70	.75+3%		½%
Cable Splicers	14.67	.70	.75+3%		½%
Area 3	11.47		3%		½%
Area 4					
Contracts under $75,000					
Electricians	13.20	.70	.75+3%		½%
Cable Splicers	13.86	.70	.75+3%		½%
Contracts over $75,000					
Electricians	14.35	.70	.75+3%		½%
Cable Splicers	15.06	.70	.75+3%		½%
Area 6					
Electricians	14.35	.70	.75+3%		½%
Cable Splicers	15.06	.70	.75+3%		½%
Area 8					
Electricians	12.70	.55	.50+3%		½%
Area 9					
Electricians	12.30	.50	.75+3%		½%
LABORERS:					
Beaverhead, deer Lodge, Madison, Powell, and that portion of Jefferson Co. within the territorial limits of Districts #2.					
Group 1	9.36	.70	.60	.20	.05
Group 2	9.56	.70	.60	.20	.05
Group 3	9.61	.70	.60	.20	.05
Group 4	9.86	.70	.60	.20	.05
Group 5	9.96	.70	.60	.20	.05

DECISION #MT80-5121 Mod #1 (cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Broadwater, Lewis & Clark, Meagher, north half of Jefferson Co. including the city of Boulder; that portion of Powell Co. lying east of a north-south line at the west edge of the Town of Ellison.					
Group 1	$9.59	.70	.60	.20	.05
Group 2	9.75	.70	.60	.20	.05
Group 3	9.84	.70	.60	.20	.05
Group 4	10.09	.70	.60	.20	.05
Group 5	10.19	.70	.60	.20	.05
Cascade, Chouteau, Fergus, Glacier, Judith-Basin, Pondera, Teton, and Toole Counties.					
Group 1	9.80	.70	.60	.20	.05
Group 2	9.96	.70	.60	.20	.05
Group 3	10.05	.70	.60	.20	.05
Group 4	10.30	.70	.60	.20	.05
Group 5	10.40	.70	.60	.20	.05
Broadwater, (that portion lying south of an east-west line north of the city of Tosten), Gallatin, Madison, (that portion lying east of the Gravely Mountain Range), Park, Sweetgrass, and Wheatland Counties.					
Group 1	9.33	.70	.60	.20	.05
Group 2	9.49	.70	.60	.20	.05
Group 3	9.59	.70	.60	.20	.05
Group 4	9.83	.70	.60	.20	.05
Group 5	9.93	.70	.60	.20	.05

DECISION #MT80-5121 Mod #1 (cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Area 2					
Brush	$10.99	.69	.40		1%
Brush on Steel; Paperhanger	11.49	.69	.40		1%
Sandblasting; Spraying	13.24	.69	.40		1%
ADD:					
LINE CONSTRUCTION					
Flathead, Lake, and Lincoln Counties					
All work for power utilities, all highway lighting, street lighting and motor traffic controlling.					
Lineman	12.32	.45	3%+.50		½%
Cable Splicer	13.71	.45	3%+.50		½%
Pole Sprayer	10.95	.45	3%+.50		½%
Line Equipment Operators	10.50	.45	3%+.50		½%
Powderman, Jackhammerman, Compressorman	9.11	.45	3%+.50		½%
Groundman	8.54	.45	3%+.50		½%
Tree Trimmer	11.35	.45	3%+.50		½%
Statewide, except Lake, Lincoln, and Flathead					
On jobs over 69 K. V. and all work on highway lighting and traffic control systems					
Lineman, Pole Sprayer	12.90	.45	3%+.50		½%
Cable Splicer	13.80	.45	3%+.50		½%
Line Equipment Operator; Powderman	11.40	.45	3%+.50		½%
Groundman	9.23	.45	3%+.50		½%

DECISION #MT80-5122 Mod #1
(45 FR 43624 - June 27, 1980

MONTANA: Counties: Cascade, Deer Lodge, Gallatin, Glacier, Hill, Missoula, Silver Bow, and Valley Counties.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
CARPENTERS:					
Area 7					
Carpenter	$11.38	.85	1.00		.04
Millwrights and Piledrivermen	11.88	.85	1.00		.04
ELECTRICIANS:					
Area 4					
Electricians	13.65	.70	.50+3%		½%
Cable Splicers	14.33	.70	.50+3%		½%
PAINTERS:					
Brush	10.99	.69	.40		1%
Paperhanger, Brush on Steel	11.49	.69	.40		1%
Spraying; Sandblasting	13.24	.69	.40		1%
LABORERS:					
Cascade and Glacier Cos.					
Group 1	9.80	.70	.60	.20	.05
Group 2	9.96	.70	.60	.20	.05
Group 3	10.05	.70	.60	.20	.05
Group 4	10.30	.70	.60	.20	.05
Group 5	10.40	.70	.60	.20	.05
Gallatin County					
Group 1	9.33	.70	.60	.20	.05
Group 2	9.49	.70	.60	.20	.05
Group 3	9.59	.70	.60	.20	.05
Group 4	9.83	.70	.60	.20	.05
Group 5	9.93	.70	.60	.20	.05
Deer Lodge & Silver Bow Counties					
Group 1	9.36	.70	.60	.20	.05
Group 2	9.56	.70	.60	.20	.05
Group 3	9.61	.70	.60	.20	.05
Group 4	9.86	.70	.60	.20	.05
Group 5	9.96	.70	.60	.20	.05

DECISION #MT80-5122 Mod #1 (cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADD:					
ELECTRICIANS:					
Area 5 (Gallatin Co.)					
Electricians	$12.70	.55	.50+3%		½%
MARBLE MASONS:					
Area 5 (Silver Bow Co.)					
Marble Masons	12.45		.55		
Area 6 (Deer Lodge)					
Marble Masons	12.40		.55		
SHEET METAL WORKERS:					
Area 4 (Add Gallatin County to Area 4)					

DECISION NO. NM79-4103 - Mod. #5
44 FR 63443 - November 2, 1979
Statewide, New Mexico

CHANGE DESCRIPTION OF WORK TO READ "General Building and Heavy Engineering construction shall include the construction, alteration, repair and demolition of buildings, including residential buildings, office buildings, warehouses, industrial and commercial buildings, institutional and public buildings, and all airconditioning, conduit, heating and other mechanical and electrical works and site preparation for building or heavy engineering projects under this classification; stadia; and shall include electrical, gas, water, sewer lines, and other such utility construction which are part of projects under this classification and included within the property line or less than five (5) feet from the building or heavy engineering structure, whichever is closer, provided, however, regard to electrical utilities such construction shall include construction from the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure; and include construction, alteration, repair and demolition of heavy engineering work such as power generating plants, pump stations, natural gas compressing stations; covered reservoirs and covered sewage and water treatment facilities; concrete linings for canals, ditches and channels; concrete dams; earth dams of one million (1,000,000) cubic yards or over; radio towers, ovens, furnaces, kilns, silos, shafts and tunnels (other than highway shafts and tunnels), hydroelectric projects; and well drilling, telephone and electrical transmission lines which are part of general building and heavy engineering projects; mining appurtenances such as tipples, washeries and loading and discharging chutes, and specialized structures for testing, launching and recovering space and other rocket-type missiles, (ALSO INCLUDING RESIDENTIAL PROJECTS IN SANTA FE, BERNALILLO, RIO ARRIBA, TAOS, SANDOVAL AND VALENCIA COUNTIES), BUT DOES NOT INCLUDE HEAVY CONSTRUCTION ON THE NAVAJO INDIAN RESERVATION."

DECISION NO. NM79-4104 - Mod. #3
44 FR 63456 - November 2, 1979
Statewide, New Mexico

CHANGE DESCRIPTION OF WORK TO READ "Street, highway, utility and light engineering construction shall include the construction, alteration, repair and demolition of roads, streets, highways, alleys, sidewalks, curbs, gutters, guard rails, fences, parkways, parking areas, airports (other than buildings thereon), bridle paths, athletic fields; highway bridges, median channels and grade separations involving highways; parks; golf courses, viaducts; uncovered reservoirs and uncovered sewage and water treatment facilities; canals, ditches and channels (including lingings other than concrete linings); earth dams under one million (1,000,000) cubic yards; well drilling, telephone and electrical transmission lines and site preparations which are part of street, highway, utility and light engineering projects; and shall include construction, alteration, repair, and demolition of utilities such as sanitary sewers, storm sewers, water lines, gas lines, including appurtenances thereto such as lift stations, inlets, manholes, sewer lagoons, septic tanks and service outlets (stub-outs), providing such utility construction is outside the property line or more than five (5) feet from a building or heavy engineering structure, except on the Navajo Indian Reservation.

DECISION NO. PA80-3025 - MOD. #2 (45 FR 25015 - April 11, 1980) Adams & York Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
CEMENT MASONS:					
Adams County	$11.33	.80	.80		
GLAZIERS	10.81	.60	.60		.01
ELECTRICIANS:					
Franklin, Carrol, Monogham and Fairview Twps. in York County	12.46	.65	3%+.67		½%
PLASTERERS:					
Adams County	10.31	.80	.80		.01
SHEET METAL WORKERS	11.66	1.44	1.18		.14
SOFT FLOOR LAYERS:					
Adams County	10.35	.60	.70		.05
SPRINKLER FITTERS	14.53	.85	1.20		.08
TRUCK DRIVERS:					
Truck Drivers, Building Pick-ups, dump, service trucks, flat trucks, to and including 2 highway license plates	9.47	d	e		
Transit mix, winch trucks, tractors all types euclids, ross lumber and over 2 plates	9.72	d	e		

Footnotes:

d. Employer contributes $93.03 per month to a Health & Welfare Fund.

e. Employer contributes $57.89 per month to a pension fund.

DECISION NO. PA80-3029 - MOD. NO. 1 (45 FR 28069 - April 25, 1980) Lebanon County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
BRICKLAYERS & STONEMASONS	$11.07	.60	.57		.01
CEMENT MASONS:					
West of Rte. 501	11.53	.70	.70		
East of Rte. 501	10.79		1.65		
ELECTRICIANS:					
That portion of Lebanon County that is North and West of Interstate Route 81, including all of the Fort Indiantown Gap Military Reservation	12.46	.65	3%+.67		¼ of 1%
That portion of Lebanon County which extends South and East of Interstate Route 81	10.84	.65	3%+.67		¼ of 1%
GLAZIERS:					
Remainder of County	10.81	.60	.60		.01
GENERAL LABORERS	7.70	.45	.50		
Operator of Jackhammer, paving breaking and other pnematic, electrical and mechanical tools, laying of all clay, terra cotta, ironstone vitrified concrete or non-metallic pipe and the making of joints for sam, wagon drill operator, cofferdam (below 10') tunnel free air, handling and using cutting or burning torches in the wrecking of buildings, blasters, plasterer tenders, mason tenders scaffold builders and removal of power buggies	7.80	.45	.50		

DECISION NO. PA80-3029 - (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MILLWRIGHTS	$13.52	.60	.70		.05
PAINTERS:					
East of Route 72					
Brush	10.25	.80	.95		
Structural Steel and Spray	11.30	.80	.95		
Highway & Bridge	11.70	.80	.95		
PLASTERERS:					
East of Rte. 501	10.81		1.65		
West of Rte. 501	10.31	.80	.80		.01
POWER EQUIPMENT OPERATORS:					
Group 1	13.19	7.9%	10.3%	a	1.8%
Group 2	12.90	7.9%	10.3%	a	1.8%
Group 3	12.03	7.9%	10.3%	a	1.8%
Group 4	11.26	7.9%	10.3%	a	1.8%
Group 5	10.79	7.9%	10.3%	a	1.8%
Group 6	9.88	7.9%	10.3%	a	1.8%
Group 7	13.44	7.9%	10.3%	a	1.8%
Group 7-A	13.69	7.9%	10.3%	a	1.8%
Group 7-B	13.93	7.9%	10.3%	a	1.8%
PLUMBERS & STEAMFITTERS:					
West of Rte. 501	11.80	1.00	1.00		.12
East of Rte. 501	13.23	.85	1.40		.14
SHEET METAL WORKERS	11.66	1.44	1.18		.14
SOFT FLOOR LAYERS	10.35	.60	.70		.05
SPRINKLER FITTERS	14.53	.85	1.20		.08
TERRAZZO WORKERS	11.15	.60	.57		
TILE SETTERS	11.15	.60	.57		
TRUCK DRIVERS:					
Truck Drivers, Building Pick-ups, dump, service trucks, flat trucks, to and including 2 highway license plates	9.47	f	g		
Transit mix, winch trucks, tractors all types euclids, roll lumber and over 2 plates	9.72	f	g		

DECISION NO. PA80-3029 - (Cont'd)

Footnotes:

f. Employer contributes $93.03 per month to a Health & Welfare Fund.

g. Employer contributes $57.89 per month to a pension fund.

DECISION NO. PA80-3038 MOD. NO. 1 (45 FR 35148 - May 23, 1980) Lancaster County, Pennsylvania	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS					
That portion northwest of a line extending from the Susquehanna River to the intersection of State Highways 441 and 241 along 241 to the Borough of Elizabethtown around the limits of Elizabethtown on the west and north side, but including the Masonic Homes in Elizabethtown continuing along State Highway 241 to Lebanon County and that portion north of the Pennsylvania Turnpike, but including all building on the turnpike, from Lebanon County line West Cocalico township	12.46	.65	3%+.67		½ of 1%
GLAZIERS	10.81	.60	.60		.01
PAINTERS:					
Remainder of County:					
Brush	10.25	.80	.95		
Steel	11.30	.80	.95		
Spray	11.30	.80	.95		
Roller	10.25	.80	.95		
SHEET METAL WORKERS	11.66	1.44	1.18		.14
SOFT FLOOR LAYERS	10.35	.60	.70		.05
SPRINKLER FITTERS	14.53	.85	1.20		.08

Decision No. SC80-1047-Mod.#1
(45 FR 6310 - January 25, 1980)
Statewide, South Carolina

Change:
Description of work to read:
Highway Construction projects (excluding tunnels, building structures in rest area projects and railroad construction; bascule, suspension and spandrel arch bridges; bridges designed for commercial navigation; bridges involving marine construction; and other major bridges)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4001 - MOD. #5 (45 FR 1376 - January 4, 1980)					
Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas					
CHANGE:					
Carpenters:					
Zone 2 - Carpenters	$11.85	.48	.50		.10
Millwrights	12.35	.48	.50		.10
Asbestos workers	11.95	.80	1.25		.02
Ironworkers - Zone 1	11.45	.55	1.40		.10
Power equipment operators:					
Group 1	11.00	.65	.50		.10
Group 2	10.50	.65	.50		.10
Group 3	8.55	.65	.50		.10
DECISION NO. TX80-4003 - MOD. #5 (45 FR 1380 - January 4, 1980)					
Jefferson & Orange Cos., Texas					
CHANGE:					
Carpenters:					
Residential construction of not more than 2 units & condominium townhouses of not more than 6 units excluding all apartment construction & multiple buildings for rental purposes	11.99	.55	.45		
Plasterers	13.50	.92	.45		.02
Plumbers	12.26	.65	.75		.03

DECISION NO. TX80-4003(CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sheet metal workers:					
Commercial	$12.67	3%+.58	.55		.14
Work on a single family dwelling or multiple family housing unit less than 3 stories in height where each individual family apartment is individually conditioned by a separate & independent unit or system	8.235	3%+.58	.55		.14
DECISION NO. TX80-4004 - MOD. #6					
(45 FR 1383 - January 4, 1980)					
Wichita County, Texas					
CHANGE:					
Carpenters:					
Carpenters	11.85	.48	.50		.10
Millwrights	12.35	.48	.50		.10
Cement masons	10.94				
Elevator constructors:					
Mechanics	11.14	1.195	.82	4%+a+b	.035
Helpers	70%JR	1.195	.82	4%+a+b	.035
Laborers:					
Group 1	6.65	.30	.27		
Group 2	6.78	.30	.27		
Group 3	6.90	.30	.27		
Group 4	7.15	.30	.27		
Power equipment operators:					
Group 1	9.625	.65	.625		.15
Group 2	10.525	.65	.625		.15
Group 3	10.925	.65	.625		.15
Sheet metal workers	12.29				.09

DECISION NO. TX80-4006 - MOD. #5	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
(45 FR 1388 - January 4, 1980)					
Travis County, Texas					
CHANGE:					
Cement masons	$10.79	.60	.55		
Painters:					
Group 1	10.30				
Group 2	10.55				
Group 3	10.80				
DECISION NO. TX80-4028 - MOD. #3					
(45 FR 28073 - April 25, 1980)					
Galveston & Harris Cos., Texas					
CHANGE:					
Glaziers	13.59	.67	.675		.02
Lathers (Harris Co. only)	13.92	.60	.35		.03
Plasterers	13.50	.92	.45		.02
Power equipment operators:					
Group 1	12.94	.75	1.25		.07
Group 2	11.08	.75	1.25		.07
Group 3	10.45	.75	1.25		.07
Group 4	10.24	.75	1.25		.07
DECISION NO. TX80-4031 - MOD. #2					
(45 FR 38250 - June 6, 1980)					
Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
CHANGE:					
Building Construction:					
Cement masons	10.79	.60	.55		
Elevator constructors:					
Mechanics	11.14	1.195	.82	4%+a+b	.035
Helpers	70%JR	1.195	.82	4%+a+b	.035

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4033 - MOD. #2 (45 FR 32544 - May 16, 1980) Bowie County, Texas					
CHANGE:					
Elevator constructors	$11.14	1.195	.82	4%+a+b	.035
Elevator constructors' helpers	70%JR	1.195	.82	4%+a+b	.035
DECISION NO. TX80-4034 - MOD. #1 (45 FR 38255 - June 6, 1980) Brazos County, Texas					
CHANGE:					
Carpenters	11.80				
Plasterers	13.50	.92	.45		.02
Power equipment operators:					
Group 1	12.94	.75	1.25		.07
Group 2	11.08	.75	1.25		.07
Group 3	10.45	.75	1.25		.07
Group 4	10.24	.75	1.25		.07
DECISION NO. TX80-4035 - MOD. #1 (45 FR 41832 - June 20, 1980) Collin, Dallas. Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos., Texas					
CHANGE:					
Carpenters:					
Zone 2 - Carpenters	11.45	.70	.55		.08
Elevator constructors:					
Mechanics	11.14	1.195	.82	4%+a+b	.035
Helpers	70%JR	1.195	.82	4%+a+b	.035
Sheet metal workers:					
Zone 2	12.29				.09

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4036 - MOD. #1 (45 FR 41836 - June 20, 1980) Ector & Midland Cos., Texas					
CHANGE:					
Asbestos workers	$11.95	.80	1.25		.02
Bricklayers & stonemasons	10.70	.57	.30		.03
Carpenters	11.08				.07
Plumbers & pipefitters					
Zone 1	11.25	.45	.55		.02
Zone 2	11.35	.45	.55		.02
Zone 3	11.45	.45	.55		.02
Zone 4	11.75	.45	.55		.02
DECISION NO. TX80-4037 - MOD. #1 (45 FR 32545 - May 16, 1980) Lubbock County, Texas					
CHANGE:					
Asbestos workers	11.95	.80	1.25		.02
Bricklayers & stonemasons	10.70	.57	.30		.03
Laborers:					
Group 1	6.21	.30	.27		
Group 2	6.48	.30	.27		
Group 3	6.41	.30	.27		
Group 4	6.56	.30	.27		
Group 5	6.81	.30	.27		
Power equipment operators					
Group 1	9.625	.65	.625		.15
Group 2	10.525	.65	.625		.15
Group 3	10.925	.65	.625		.15

SUPERSEDEAS DECISION

STATE: Michigan COUNTY: Kent
DECISION NUMBER: MI80-2053 DATE: Date of Publication
Supersedes Decision No. MI80-2017 dated March 21, 1980 in 45 FR 18653.
DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 7.50				
BOILERMAKERS	11.07	1.10	1.20	1.50	.03
BRICKLAYERS & STONEMASONS	7.45				
CARPENTERS	5.96				
CEMENT MASONS	6.12				
ELECTRICIANS	12.85	.75	3%+.35		.01
ELEVATOR CONSTRUCTORS	9.90	.545	.35	4%+a&b	.02
IRONWORKERS:					
Structural & Ornamental	5.86				
Reinforcing	5.92				
LABORERS - UNSKILLED	4.89				
LABORERS - MASON TENDERS	5.15				
PAINTERS - BRUSH	10.30	.50	.25		.02
PAINTERS - TAPERS	10.30	.50	.25		.02
PLASTERERS	7.80				
PLUMBERS & STEAMFITTERS	14.09	.70+.15	1.30		
ROOFERS	5.55				
SHEET METAL WORKERS	11.40	.77+c	.95	.67	.02
TRUCK DRIVERS	5.62				
POWER EQUIPMENT OPERATORS:					
Backhoe Operator	7.15				
Bulldozer Operator	8.35				
Crane Operator	5.27				
Finishing Machine Operator	5.50				
Front End Loader	7.02				
Scraper	7.00				

FOOTNOTES:
a. 6 Paid Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.
b. Employer contributes 4% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years & 2% for employee in business less than 5 years.
c. $5.00 per month - Life Insurance

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: OHIO COUNTY: LUCAS
DECISION NO. OH80-2048 DATE: Date of Publication
Supersedes Decision No. OH79-2064, dated July 6, 1979, in 44 FR 39933
DESCRIPTION OF WORK: Building and Residential Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.83	.55	1.40		.04
BOILERMAKERS	13.575	1.075	1.00		.03
BRICKLAYERS; MARBLE SETTERS & Stonemasons	13.175	1.06	1.40		.01
CARPENTERS; MILLWRIGHTS & Piledrivermen	13.70	1.20	.75		.05
CEMENT MASONS	14.99	.60			.02
ELECTRICIANS:					
Commercial	15.30	.85	3%+.95		.3%
Residential	9.54	.65	3%+.55		.1%
ELEVATOR CONSTRUCTORS:					
Elevator Constructors	13.225	.745	.56	a+b	.035
Helpers	70%JR	.745	.56	a+b	.035
GLAZIERS	12.675	.70	1.00		.01
IRONWORKERS	13.45	1.06	1.48		.06
LATHERS	13.76	1.20	.10		.01
LINE CONSTRUCTION:					
Linemen	15.12	.70	3%	c	½%
Cable Splicers	15.37	.70	3%	c	½%
Groundmen	9.10	.70	3%	c	½%
PAINTERS:					
Commercial:					
Brush; Drywall Tapers; Paper hangers	11.93	1.06	1.30		
Bridge; Railings; Powerhouse; Refinery Tanks	12.18	1.06	1.30		
Sandblasting; Spray; Pressure Cleaning	12.48	1.06	1.30		
Residential Work	10.79	1.06	1.30		
PLASTERERS	14.65	.60			.01
PLUMBERS; STEAMFITTERS; PIPEFITTERS:					
Commercial Building	15.64	1.35	1.15		.12
Residential	8.35	.50	.30		.03
ROOFERS	12.98	1.06	1.50		.02
SHEET METAL WORKERS	13.155	1.20	1.57		.045
SOFT FLOOR LAYERS:					
Commercial	12.03	1.20	.75		.04
Residential	10.30	1.20	.75		.04
SPRINKLER FITTERS	15.04	.85	1.20		.08
TERRAZZO WORKERS; TILE SETTERS	13.53	1.06	.30		
TERRAZZO WORKERS' FINISHERS & Tile Setters' Finishers	11.00	1.06	.40	.50	

DECISION NO. OH80-2048

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:
a. Seven Paid Holidays: A through F, & Day after Thanksgiving
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.
c. Ten Paid Holidays: A through F, Good Friday, Day after Thanksgiving Day, Christmas Eve, & New Year's Eve

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Unskilled Laborers	$11.41	.80	.80		.11
Mason Tenders	11.54	.80	.80		.11
Gunnite Pot Men; Mortar Mixers	11.61	.80	.80		.11
Concrete Pump Nozzle Men; All Power Driven Tools; Power Buggies	11.565	.80	.80		.11
Pipe Layers; Bellmen; Bottom Men for Fire Brick Work Only	11.665	.80	.80		.11
Nozzle Operators for Gunnite Work	12.32	.80	.80		.11
Plasterers' Tenders	11.43	.80	.80		.11

DECISION No. OH80-2048

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP A	$13.44	.96	1.00		.11
GROUP B	13.28	.96	1.00		.11
GROUP C	12.93	.96	1.00		.11
GROUP D	12.12	.96	1.00		.11
GROUP E	11.79	.96	1.00		.11
GROUP F	9.58	.96	1.00		.11

GROUP A - A-Frame; Rotary Drills Used on Caisson Work for Foundations and Sub-Structure Work; Boiler or Compressor Operator Mounted on Crane (Piggyback Operation); Boom Truck (All Types); Cableways; Cherry Pickers; Combination Concrete Mixer and Tower; Concrete Pumps; Cranes (ALL Types); Derricks (ALL Types); Draglines; Dredge (Dipper, Clam or Suction) 3 Man Crew; Elevating Grader or Euclid Loader; Floating Equipment; Gradalls; Helicopter Operator and Helicopter Winch Operator when Hoisting Builders Materials; Hoes (All Types); Hoisting Engines (Two or More Drums;); Lift Slab or Panel Jack Operator; Locomotives (All Types); Maintenance Engineer (Mechanic or Welder); Mixers Paving (Multiple Drum); Mobile Concrete Pumps with Boom; Panelboard (All Types on Site); Pile Driver; Power Shovels; Side Booms; Slip Form Pavers; Straddle Carriers (Building Construction on Site); Hammerhead Tower Cranes; Trench Machines (over 24" Wide); Tug Boat

GROUP B - Asphalt Paver; Bulldozer; C.M.I. Type Equipment; Endloaders; Kohlman Type Loaders (Dirt Loading); Lead Greaseman; Mucking Machines; Power Grader; Power Scoops; Power Scrapers; Push Cat

GROUP C - Air Compressor (Pressurizing Shafts or Tunnels); Asphalt Rollers; Fork Lifts; Hoist (One Drum); House Elevators; Man Lift; Power Boilers (Over 15 lbs. Pressure); Pump Operators Installing Well Points or Other Type of Dewatering System; Pumps (4" and over discharge); Submersible Pumps (4" and over discharge); Trenchers 24" and under

POWER EQUIPMENT OPERATORS Cont.

GROUP D - Compressors on Building Construction; Conveyors (Building Material) Generators; Gunnite Machines; Mixers (Capacity more than one Bag); Mixers (One Bag Capacity, Side Loader); Post Driver; Post Hole Diggers; Pavement Breaker (Hydraulic or Cable); Road Widening Trencher; Rollers; Welder Operator

GROUP E - Backfillers & Tampers; Batch Plant; Bar and Joint Installing Machines; Bullfloats; Burlap and Curing Machines; Clefplanes; Concrete Spreading Machines; Crushers; Deck Hands; Drum Firemen (Asphalt); Farm Type Tractors Pulling Attachments; Finishing Machines; Form Trenchers; High Pressure Pumps Over ½" Discharge; Hydro Seeders; Self-Propelled Power Spreader; Self-Propelled Sub-grader; Tire Repairmen; Tractors Pulling Sheeps Foot Roller or Grader; Vibratory Compactors (With Integral Power)

GROUP F - Oiler; Tenders; Inboard & Outboard Motor Boat Launch; Light Plant Operator; Power Driven Heaters (Oil Fired); Power Boilers (less than 15 lbs. Pressure); Pumps Under 4" Discharge; Submersible Pumps Under 4" Discharge

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Ohio COUNTIES: Mahoning & Trumbull
DECISION NO.: OH80-2024 DATE: Date of Publication
Supersedes Decision No. OH78-2148, dated November 13, 1978 in 43 FR 52658
DESCRIPTION OF WORK: Building and Residential Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$14.69	.55	1.50		.02
BOILERMAKERS	12.68	.90	1.20		.03
BRICKLAYERS; Stonemasons:					
Mahoning Co. & city of Youngstown	13.595	.85	1.25		.02
Trumbull (Remainder of County) Co.	13.99	.75	.50		.02
CARPENTERS:					
Commercial Building	12.77	1.34	1.35		.06
Residential	11.49	1.34	1.35		.06
CEMENT MASONS:					
Mahoning & Trumbull (Twps. of Hubbard & Liberty) Cos.	14.15	.70	.50		.05+c
Trumbull (Rem. of Co.) Co.	14.10	.75			.05+c
ELECTRICIANS:					
Mahoning (Milton Twp.) & Trumbull (Excluding Hubbard & Liberty Twps.) Cos.	15.54	.75	7%		.7%
Mahoning (Austintown, Beaver, Berlin, Broadman, Canfield, Ellsworth, Coitsville, Goshen, Green, Jackson, Poland, Springfield, & Youngstown Twps.) & Trumbull (Hubbard & Liberty Twps.) Cos.	14.52	.75	11%		.5%
Mahoning (Smith Twp.) Co.					
Commercial Building	14.46	.79	3%+.60		.3%
Residential (4 units only)	9.65	.55	3%+.50		.3%
ELEVATOR CONSTRUCTORS	13.70	1.195	.82	a+b	.035
ELEVATOR CONSTRUCTORS' HELPERS	9.59	1.195	.82	a+b	.035
GLAZIERS	13.76	.85	1.00		
INSULATORS:					
Residential	7.50	1.34	1.35		.06
IRONWORKERS:					
Ornamental; Reinforcing; & Structural	14.25	.75	1.30		.09

DECISION NO. OH80-2024

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Asphalt Paving; Building & Construction Laborers; Carpenter Tenders & Railroad Construction Laborers	10.78	.70	.90		.10
All Machine Driven Tools, Electric, Gas or Air & Operation of all Pumps under 4"; All Men Working in Concrete such as Pouring, Puddling, Raking & Conveying; All Scaffold Help; Jackhammer Operator; Mason Tender; Mortar Mixer (Hand or Machine); Scrap Iron Burning & Spikers	10.90	.70	.90		.10
All Work done by Laborers 7 ft. or more in Depth	10.97	.70	.90		.10
Laborers (except Jackhammer) Working on Repair of Blast furnaces or Coke Plant & Auxiliary Facilities	11.08	.70	.90		.10
Jackhammer Operator in Trench or Shaft 7 ft. or more; Jackhammer on Blast Furnace or Coke Plant; Laser Beam Operator; Muckers; Pipelayers; Powder and Dynamite; & Tunnel and Caisson	11.10	.70	.90		.10
Ram Tight	11.15	.70	.90		.10
Gunniting & Sandblasting; Miner Air Tool; Pump Crete Operations; & Wrench Man	11.18	.70	.90		.10
Lancing	11.28	.70	.90		.10
Bellman; Hook Up Man	11.38	.70	.90		.10

DECISION NO. OH80-2024

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Mahoning (excluding Smith Twp.) & Trumbull Cos.:					
Linemen; Cable Splicer; Operator - Pole Digging Equipment	$16.21	.70	3%		½%
Groundmen	12.97	.70	3%		½%
Mahoning Co. (Smith Twp.):					
Linemen	14.46	.79	3%+.60		.3%
Cable Splicer	13.70	.79	3%+.60		.3%
Line Equipment Operators	12.20	.79	3%+.60		.3%
Groundman; Truck Driver	8.60	.79	3%+.60		.3%
MARBLE SETTERS; Terrazzo Workers; & Tile Setters:					
Mahoning Co.	15.255				
MARBLE SETTERS' FINISHERS; Terrazzo Workers' Finishers; & Tile Setters' Finishers:					
Mahoning (excluding Smith Twp.) & Trumbull Cos.	14.405				
MILLWRIGHTS; Piledrivermen	13.56	1.34	1.35		.06
PAINTERS:					
Brush; Dipping; Hydro Jet Cleaning; Paperhangers; Roller; Steamcleaning; Wall Washing; & Waterproofing	13.45	.85	1.15		
Spray; Epoxy-mastic (Brush & Roller)	13.95	.85	1.15		
Drywall Taping	13.60	.85	1.15		
Open Structural Steel	13.66	.85	1.15		
PLASTERERS:					
Mahoning & Trumbull (Liberty & Hubbard Twps.) Cos.:					
Commercial	14.46	.70			.03
Residential	12.29	.70			.03
Trumbull Co. (Rem. of Co.):					
Commercial	13.74	.60			.03
Residential	10.31	.60			.03
PLUMBERS; Steamfitters:					
Commercial:					
Mahoning & Trumbull (Hubbard & Liberty Twps.) Cos.	14.54	1.17	.80		.05

DECISION NO. OH80-2024

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS; Steamfitters (Cont'd):					
Commercial:					
Trumbull Co. (Exclu. Hubbard & Liberty Twps.)	$14.69	1.07	1.15		.03
Residential	8.35	.50	.30		.03
ROOFERS	13.70	.85	.90		.02
SHEET METAL WORKERS:					
Commercial	14.14	.75	.83		.06
Residential	13.54	.75	.83		.06
SOFT FLOOR LAYERS:					
Commercial	12.23	1.34	1.35		.06
Residential	11.00	1.34	1.35		.06
SPRINKLER FITTERS	15.04	.85	1.20		.08

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Seven Paid Holidays: A through F, & Day after Thanksgiving

b. Employer contributes 8% of Regular Hourly Rate to Vacation Pay Credit for Employee who has Worked in Business more than 5 Years, and 6% for Employee in Business less than 5 Years

c. $25.00 Per Employee Per Year

DECISION NO. OH80-2024

POWER EQUIPMENT OPERATORS COMMERCIAL BUILDING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	14.36	1.05	1.00		.16
CLASS II	13.67	1.05	1.00		.16
CLASS III	13.03	1.05	1.00		.16
CLASS IV	12.62	1.05	1.00		.16
CLASS V	12.52	1.05	1.00		.16
CLASS VI	14.63	1.05	1.00		.16
RESIDENTIAL					
CLASS I	13.36	1.05	1.00		.16
CLASS II	12.67	1.05	1.00		.16
CLASS III	12.03	1.05	1.00		.16
CLASS IV	11.62	1.05	1.00		.16
CLASS V	11.52	1.05	1.00		.16
CLASS VI	13.63	1.05	1.00		.16

CLASS I - Asphalt Planer Heater; Austin Western & Similar Type; Backhoe; Batch Plant-Central Mix; Batch Plant-Portable Concrete; Berm Builder-Automatic; Backfiller W/Drag Attachments; Boat Derrick; Boat Tug; Boring Mach. Attached to Tractor; Bullclam; Bulldozer; C.M.I. Road Builder & Similar Types; Cable Placer & Layer; Carrier-Straddle; Carryall-Scraper or Scoop; Chicago Boom; Compactor w/Blade Attached; Concrete Spreader Finisher Comb., Crane; Crane-Stationary or Climbing; Crane-Electric Overhead; Crane-Side Boom; Crane Truck; Crane-Tower; Derrick-boom; Derrick-Car; Diggers-Wheel (not Trencher or Road Widener); Double Nine; Drag Line; Dredge; Drill-Kenny or Similar Type; Electromatic; Fork Lift; Frankie Pile; Gradall; Grader-Power; Gurry; Gurry-Self-Propelled; High Lift; Hoist-Monorail; Hoist-Stationary & Mobile Tractor; Hoist-2 or 3; Jackall; Jumbo Mach.; Kocal or Kuhlman; Land-Seagoing Vehicle; Loader - Elevating; Loader-Front End; Locomotive; Mechanic as Welder; Metro Clip Harvester w/Boom; Mucking Mach.; Paver-Asphalt Finishing Mach.; Paver-Road Concrete; Paver-Slip Form; Place Crete Mach; Post Driver; Power Driven Hydraulic Pumps & Jacks; Pump Crete Machine; Regulator-Ballast; Reigs-Drilling; Shovels; Spikemaster; Stonecrusher; Tie Puller & Loader; Tie Tamper; Tractor-Double Boom; Tractor W/ Attachments; Truck-Boom; Truck-Tire-Assigned to Job; Trench Mach.; Tunnel Machine (Mark 21 Java or Similar); Whirley

CLASS II - Asphalt Plant; Bending Machine; Boring Mach.; Chip Harvester W/O Boom; Cleaning Mach.- Pipeline Type; Coating Mach-Pipeline Type; Concrete Belt Placer; Concrete Finisher; Concrete Planer or Asphalt; Concrete Spreader; Elevator; Fork Lift Walk Behind; Form Line Mach.; Grease Truck Op.; Grout Pump; Gunnite Mach.; Huck Bolting Mach.; Hydraulic Scaffold; Paving Breaker; Pipe Dream; Pot Firemen; Power Broom; Refrigeration Plant; Sasgen Derricks; Seeding Mach.; Self-Propelled Mobile Vibrator Compactor or roller; Hoist-Single Drum; Soil Stabilizer (Pump Type); Spray Cure Mach.-Self Propelled; Straw Blower Mach.; Sub-Grader; Tube Finisher or Broom C.M.I. or Similar Type; Tugger Hoist

DECISION NO. OH80-2024

POWER EQUIPMENT OPERATORS (CONT'D)

CLASS III - Batch Plant-Job Related; Boiler Op.; Compressor (125 CFM or over); Curb Builder (Self-propelled); Generator-Steam; Jack-Hydraulic Driven; Mixer-Concrete; Mulching Machine; Pin Puller; Pulverizer; Pump; Road Finishing Machine (Pulltype).; Roller; Saw-Concrete-Self-propelled; Spray Cure Machine - Motor Powered; Spreader (Side driver shoulder attachment); Tractor; Trencher-form; Water Blaster
CLASS IV - Brake Man; Compressor Under 125 CFM; Conveyor; Conveyor 12 ft. or under other than servicing Bricklayers; Deck Hand; Drill Wagon; Generator Sets; Heaters-Portable Power (2 to 5); Mechanic; Jacks Hydraulic (Railroad); Ladavator; Roller (Walk behind 1 ton or over); Steam Jenny; Syphons; Tenders; Vibrator-Gasoline; Welding Machines (2) (Fuel Burning)
CLASS V - Oiler
CLASS VI - Rigs-Pile Driving or Caisson Type

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

[FR Doc. 80-20511 Filed 7-10-80; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday
July 11, 1980

Part V

Council on Wage and Price Stability

Modification of Voluntary Price Standards; Request for Comments

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 705

Request for Comments on Modifications of Voluntary Price Standards

AGENCY: Council on Wage and Price Stability.

ACTION: Request for comments on modifications of voluntary price standards.

SUMMARY: The Council is seeking broad public participation in evaluating the voluntary price standards program. Public input analyzing and reviewing the second program year is essential for designing an effective third-year program.

To facilitate preparation of comments, the Council has provided background information on issues that must be resolved for the third program year. These practical and conceptual issues raise a number of possible modifications of the standards.

Assuming that there will be a third program year, the Council intends to publish interim final price standards in September 1980.

DATES: Written comments on modifications of voluntary price standards should be submitted by August 1, 1980.

ADDRESS: Send comments to: Office of General Counsel, Council on Wage and Price Stability, Winder Building, 600 17th Street, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT:
Patrick Macfarland (202) 456-6286.

SUPPLEMENTARY INFORMATION: The Council is specifically soliciting comments on the issues presented in this document, although comments on any related issues will be appreciated. Comments should be sent to the above address no later than August 1, 1980.

Authority: Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904, note); E.O. 12092 (November 1, 1978); E.O. 12161 (September 28, 1979).

Issued in Washington, D.C. July 7, 1980.

R. Robert Russell,

Director, Council on Wage and Price Stability.

THE PAY/PRICE STANDARDS PROGRAM: EVALUATION AND THIRD-YEAR ISSUES

Table of Contents

I. Introduction

The purpose of this document is to solicit public comment on one of the central components of the broad anti-inflation program that the President announced in October 1978—the voluntary pay and price standards. During the first year of the program, the standards restrained the rise in prices and employment costs in the industrial sector of the economy. But accelerating inflation created problems for designing the second-year program, and we observed at that time that some of the provisions of the standards created distortions or inequities. To initiate the process of evaluation and review and to encourage public participation, we published an *Issue Paper* on August 7, 1979, requesting comments on the first-year standards. The paper included an economic review of the first program year as well as a discussion of conceptual and practical issues on which we particularly wanted the public to focus.

The response to the *Issue Paper* was helpful in developing the second-year standards—not only in revealing how the public perceived the program but also in getting the public's views on some of the options for resolving the technical issues. After considering the responses to the *Issue Paper*, the Council on September 28, 1979, published interim final second-year price standards. With minor changes, these standards became final on November 1, 1979.

As a result of comments that this program, unlike previous ones, had not included a clearly defined role for representatives of labor, management, and the public, the President created the Council's Pay Advisory Committee. The Committee, composed of 18 members—six representatives each from labor, business, and the general public—was given a variety of tasks, with its principal assignment being to recommend modifications of the pay standard, including the basic pay limitation, the inflation assumption for evaluating cost-of-living-adjustment clauses, and the adjustment for employee units not covered by such clauses. The Council's Price Advisory Committee was also created to include six representatives of the general public and it was asked to comment on the revised price standard developed for the second program year.

As we approach the end of the second program year, we confront the question, once again, of whether the pay and price standards should be extended for a third year, and, if so, with what changes, major or minor. Historically, programs like this tend to diminish in effectiveness over time and may develop distortions and inefficiencies. Against these considerations, we must weigh the manifest need for continued pay and price restraint, and the doubt that restrained monetary and fiscal policy alone can limit inflation except at excessive costs.

Because the comments we received last year were helpful and because many interested parties have asked for one, we have published another *Issue Paper*. Like last year's, it includes an evaluation of the standards program to

date, drawing on both published aggregate data and aggregated company-specific data supplied to the Council (although the latter are available so far only for the first program year). This evaluation (presented in Section II) constitutes a regulatory review of the standards program. Section III attempts to identify both fundamental issues—including the most fundamental one of whether the standards should be continued in something like their present form—and technical issues on which we wish to have the public's comments.

The situation with the pay standard differs from that with the price standards. The Council adopted the present pay standard only recently after lengthy consideration by and consultation with the Pay Advisory Committee. We have therefore decided that it would be premature to publish a discussion of pay-standard issues at this time, although comment on this subject is not precluded.

II. Evaluation of the Program

Our evaluation begins with a review of wage and price developments both before and during the program (Subsection A). This cursory review provides evidence about the program's effectiveness—based upon both what actually happened during the program and estimates of what would have happened in the absence of the program. Subsections B and C use aggregated company data supplied to the Council to assess the extent to which companies were constrained by the standards and to quantify the amount of noncompliance with the standards and the various sources of slippage (i.e., variation from the basic pay and price limitations attributable to exemptions, exceptions, and exclusions).

A. Analysis of Aggregate Wage and Price Data

1. *Price Performance.* When the anti-inflation program was announced in October 1978, the annual rate of inflation—as measured by the Consumer Price Index (CPI)—was running about 9 percent (see Table 1). During the first quarter of the program, the inflation rate changed very little, but in early 1979 it escalated sharply to about 13 percent. Then, after remaining in the 13-to-14-percent range throughout 1979, it rose sharply again in early 1980 reaching an annual rate of 18 percent, before falling in April and May to an annual rate of 11 percent.

Table 1.—*Selected Components of the Consumer Price Index*

[Seasonally adjusted, annual percentage rates of change]

	December 1979 relative importance (percent)	Calendar 1978 [1]	Calendar 1979 [1]	First program year					Second program year		
				Change over previous quarter							
				78:III	78:IV	79:I	79:II	79:III	79:IV	80:I	March to May [2]
All Items	(100.0)	9.0	13.3	8.9	8.9	13.0	12.8	13.8	13.7	18.1	11.3
Energy Commodities	(6.9)	8.1	52.3	10.9	18.9	37.5	83.8	67.9	26.7	96.5	0.0
Mortgage Interest Cost (MIC)	(8.7)	22.0	34.7	24.0	25.1	31.5	27.7	29.0	52.8	53.8	47.3
Food	(17.7)	11.8	10.2	6.7	11.6	16.0	6.4	6.5	12.1	3.8	5.2
All Items less MIC and Energy Commodities	(84.4)	8.4	9.2	7.7	7.2	10.2	8.0	9.3	9.5	9.8	8.8
All Items less Food, MIC, and Energy Commodities	(66.8)	7.3	9.0	7.9	6.9	8.7	8.4	10.0	8.9	11.4	9.8
Underlying Rate [3]	(47.9)	6.5	7.8	6.6	7.2	7.5	7.2	8.1	8.6	12.7	9.7

[1] December-to-December changes not seasonally adjusted.
[2] Rates of change from March to May; June figures are not yet available.
[3] The Consumer Price Index excluding the costs of food, energy, used cars, and home purchase, finance, insurance, and taxes.
Source: CWPS calculations based on data from U.S Department of Labor, Bureau of Labor Statistics.

These accelerations are commonly cited as evidence that the pay/price-standards program was ineffective. That summary conclusion is not well founded. The standards program necessarily excludes many prices from its coverage; it makes no sense to apply standards that call for price restraint in markets where sellers have little or no discretion in setting prices—i.e., in highly competitive markets, where attempts to hold prices below market-clearing levels would quickly generate damaging shortages. We therefore excluded from the program prices set in organized exchange markets. We also excluded raw-material prices, generally, because most are determined in highly competitive world markets, and attempts to restrict these prices artificially could quickly reduce domestic supplies. Also excluded are prices set by sales contracts in effect before the program, prices of new or custom products (since it is impossible to compute price changes for these commodities), and interest rates (since these are competitively determined and are heavily influenced by policy decisions of the Federal Reserve Board). Despite these exclusions, about 60 percent of the economy is covered by the price standards, as compared to about 45 percent under the Nixon Administration's mandatory controls.

The surge in the inflation rate in 1979 and early 1980 was the result primarily of a sharp acceleration in prices not covered by the standards. The world-wide economic expansion that continued throughout 1979 sent raw-material prices skyrocketing. These soaring, raw-material prices rippled through the American economy, forcing many companies off the basic price limitation and onto the gross-margin and profit-margin limitations, which allow uncontrollable cost increases to be passed through.

The most dramatic raw-material price surge was the 110-percent increase in crude-oil prices during 1979 and early 1980. This jump contributed to the 80-percent increase in the U.S. energy-commodity prices during that period. In fact, the energy-commodity component of the CPI, accounting for only 7 percent of the weight, was directly responsible for one-fifth of the overall increase in consumer prices in 1979, and nearly one-third of the price surge in the first quarter of 1980.

There were, moreover, substantial *indirect* effects, not only because energy is an important input into the production process, but also because rising consumer prices elicit higher wage demands, and so inflate labor costs. It has been estimated that the total effect of energy-price increases is roughly double the direct effect, although much of the indirect effect is lagged. We independently estimate that at least 2 percentage points of the inflation rate in early 1980—on top of the 5.2 points of direct impact—is attributable to the

lagged effect of soaring energy prices in 1979.

Of course, not all of this increase in energy prices can be attributed to the doubling of crude-oil prices during this period; a large part is attributable to the substantially expanded margins of both petroleum refiners and gasoline and home-heating-oil retailers and distributors. Earlier this year, the Council published a detailed analysis of these expanded margins (*Petroleum Prices and the Price Standards*, February 25, 1980).

Another important contributor to the recent surge in the CPI was the steep climb in interest rates. This contributes directly to the measured rate of inflation through the homeownership component of the CPI. Mortgage interest costs increased 35 percent during 1979, and at an annual rate of 54 percent in early 1980. Thus, the mortgage-interest component of the CPI, whose weight is only 8½ percent of the total, was responsible for one fourth of the total inflation in 1979 and the first quarter of 1980.

Taken together, energy-commodity prices and mortgage-interest costs, which accounted for less than one-sixth of the weight of the CPI, were responsible for nearly half of the inflation in 1979 and for over half of the inflation in the first quarter of 1980. Even more dramatic, they accounted for three-fourths of the *acceleration* in inflation from 1978 to 1979 and from 1979 to the first quarter of 1980.

No reasonable anti-inflation program could have prevented the surge of inflation caused by the escalation of crude-oil prices and interest rates. No petroleum importing country has insulated itself from the world-wide explosion of crude-oil prices. The U.S. economy has, indeed, been the hardest hit, because it is the most energy-intensive country in the world other than Canada (see section V of the Council's *Inflation Update*, released June 12, 1980). Similarly, any attempt by the Federal Reserve Board to prevent the surge in interest rates by accomodating the large demand for credit would have exacerbated the inflation by expanding the money supply even more rapidly and adding to aggregate demand. The degree to which interest rates can be lowered by expanding the money supply is limited since high interest rates are as much a result as a cause of high inflation rates. (The inflation rate affects interest rates by influencing price expectations and hence the expected real rates of return from any given level of interest rates.)

For these reasons, both crude-oil prices and interest rates have been excluded from the program, and the very large part of inflation for which they have been responsible cannot be attributed to noncompliance with the standards. On the other hand, this experience demonstrates the limitations of wage and price standards as an instrument for combating inflation: They are essentially powerless to prevent inflation caused by either excess aggregate demand or surging raw-material prices.

The proper measure to be used in assessing the program's effectiveness is the behavior of prices in the sector of the economy that it covers. No precise index is available. As a proxy, we have used the CPI-based underlying inflation rate (the CPI less the food, energy, homeownership, and used-car components). This and other underlying-rate concepts which are intended to measure fundamental inflationary pressures in the industrial and service core of the economy (in contrast with the effects of exogenous shocks such as the crude-oil price increase) are discussed in the Coucil's latest *Inflation Update* (June 12, 1980).

The CPI-based measure of the underlying rate of inflation was 6½ percent when the program was announced in October, 1978. It accelerated very little until the third quarter of 1979, when it moved up to 8 percent. Another gradual increase, to about 8½ percent, in the fourth quarter of 1979 was succeeded by an abrupt ascent to about 12½ percent in the first quarter of 1980. The rise in the underlying inflation rate reflected in this measure was genuine; on the other hand, the 12½ percent figure exaggerates it, since it reflects, in large part, the temporary surge of energy costs through other sectors of the economy; a surge that would be expected to abate, with a lag, once the surge of energy prices themselves abated.

Like the changes in the entire CPI, accelerations or decelerations of even the underlying inflation rate do not in themselves provide clear evidence of the effectiveness or ineffectiveness of the program. The ideal test, of course, is a comparison of the actual inflation rate with the rate that would have prevailed in the absence of the program; we will report some results of such comparisons in the final segment of this section. Another approach is to compare the price increases that actually took place with what the standards would have allowed; this we will do here.

The underlying inflation rate during the 1976–77 based period—as measured by the CPI residual—was about 6–1/4 percent. Because the first-year price standard called for price increases 1/2 percentage point below those in the base period, one would expect, with universal compliance and no slippage (i.e., in the absence of larger price increases attributable to exceptions and exclusions from the general standard), an underlying rate of inflation during the first year of 5–3/4 percent. The actual rate was 7–1/2 percent, suggesting slippage and/or noncompliance of about 1–3/4 percentage points. As will be seen in the next section, most of the slippage is attributable to the passing through of the surge in raw-material prices throughout 1979 under the exceptions and alternative standards available to those with uncontrollable cost increases.

In the second year, the price standard was loosened by 1 percentage point. Hence—again with universal compliance and no slippage—one would expect the underlying rate of inflation to have been about 6–3/4 percent. The actual annual rate during the first quarter of the second program year was 8–1/2 percent, indicating slippage of about 1–3/4 percentage points—the same as in the first program year. The apparent slippage increased substantially in the first quarter of 1980, but appears to have declined since then.

To conclude, inflation rates in the sectors covered by the standards appear not to have been inexplicably larger than would be expected with universal compliance and no slippage. Because there was substantial slippage attributable to the surge in raw-material prices, the aggregate price data do not support the contention that the standards were ineffective.

2. *Wage Performance.* The pattern of changes of wages and other measures of labor compensation suggest that the pay standard has had a definite restraining influence. Wage inflation during the first year of the program was slightly below the rate in the preceding year, despite the sharp acceleration that took place in the cost of living and concomitant decline in real wages (see Table 2). Union wages went up by 8–1/2 percent, and nonunion wages by 7–1/2 percent. The average increase in total private labor compensation (wages plus private fringe benefits) was about 1/2 percentage point higher than in wages alone, because fringe benefits increased by 12 percent.

The 8–1/2 percent increase in total private labor compensation during the first year of the program was about 1–1/2 percentage points above the 7-percent pay standard. It thus appears that the amount of slippage on the pay side was slightly smaller than on the price side—a result that is not surprising in view of

the substantial increase in raw-material prices during that year.

Wage inflation appears to have accelerated somewhat in late 1979 and early 1980. The rate of increase of the hourly earnings index moved up to 9–1/2 percent in the second half of 1979 and to 10 percent in the first quarter of 1980.

Table 2.—*Selected Measures of Employee Compensation (Private Nonfarm Sector)*[1]

[Seasonally adjusted, annual percentage rates of change]

	Fiscal 1978	Fiscal 1979	First program year					Second program year		
			Change over previous year							
			78:III	78:IV	79:I	79:II	79:III	79:IV	80:I	March to May
Average Hourly Earnings	8.6	8.3	8.0	10.0	8.4	6.1	8.8	8.6	9.1	3.7
Hourly Earnings Index	8.4	8.2	8.0	8.4	7.9	7.0	9.6	9.2	10.0	6.5
Employment Cost Index	8.0	7.7	8.2	6.1	8.2	7.8	8.7	10.0	10.0	.....
Union	7.9	8.4	8.7	8.2	7.4	8.7	9.1	10.8	9.5	.....
Nonunion	8.0	7.3	7.8	4.5	8.7	7.8	7.8	9.5	10.4	.....
Total Hourly Compensation	8.6	8.9	8.7	8.7	10.3	7.9	8.6	9.0	10.3	.....
Private Hourly Compensation	8.4	8.6	9.0	8.8	8.8	8.2	8.9	9.1	10.2	.....
Wages & Salaries Per Hour	8.2	8.3	8.6	8.8	8.8	7.4	8.1	8.7	9.7	.....
Fringe Benefits Per Hour	10.1	12.0	12.3	9.1	8.9	15.2	15.2	12.6	13.7	.....
Employer Contributions to Social Insurance Per Hour	11.7	12.2	5.0	7.4	33.5	5.2	5.2	6.6	13.3	.....
Real Hourly Earnings Index	0.1	−3.6	−0.3	−0.4	−5.3	−5.7	−3.4	−4.1	−7.1	−4.6
Real Spendable Earnings (Weekly)	−3.2	−3.9	−2.4	−0.4	−1.3	−9.5	−4.4	−5.6	−11.8	−11.4

[1] Fiscal year figures for the Employment Cost Index and all hourly and real-earnings series are September-to-September changes and quarterly figures measure three-month changes. Hourly compensation, productivity, and unit labor costs are for all employees in the nonfarm business sector, fiscal year figures measure third quarter to third quarter changes.

Source: CWPS calculations based on data from U.S. Department of Labor, Bureau of Labor Statistics; and U.S. Department of Commerce, Bureau of Economic Analysis.

An interim pay standard was in effect during the last quarter of 1979 and the first quarter of 1980 while the Administration awaited the recommendations of the Pay Advisory Committee. During this period, the Council implemented an automatic 1-percentage-point catch-up adjustment for workers in employee units that were in compliance during the first program year and did not have cost-of-living-adjustment clauses, which raised the standard to 8 percent for the great majority of workers. The 9-to-10 percent increases that actually occurred in this period thus reflect a difference of about 1 to 2 percentage points, which is comparable to the different in the first program year.

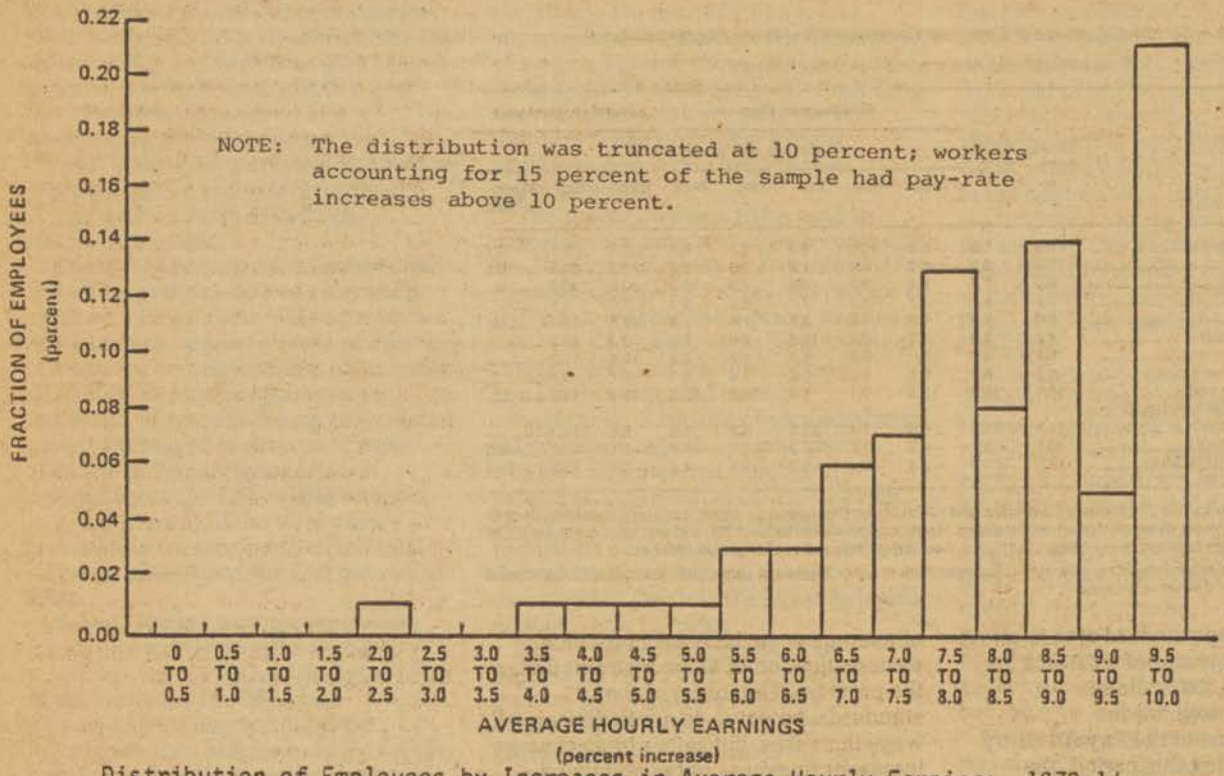
3. *Wage Distributions.* The behavior of average wage increases provides some indication of wage restraint under the program. The intent of the standards, however, is not to restrain all wage increases, but rather to discourage increases in excess of the stipulated ceiling after allowances for exceptions and exclusions, without elevating increases that otherwise would have been below it. We can roughly assess our success in achieving these goals by examining the way in which individual wage increases were distributed.

Figure 1 shows distributions in the first program year (1978:IV to 1979:III) and the base period (1977:IV to 1978:III). (For simplicity, we refer to the former of these periods as 1979 and the latter as 1978). The data are nominal wage increases for all workers.

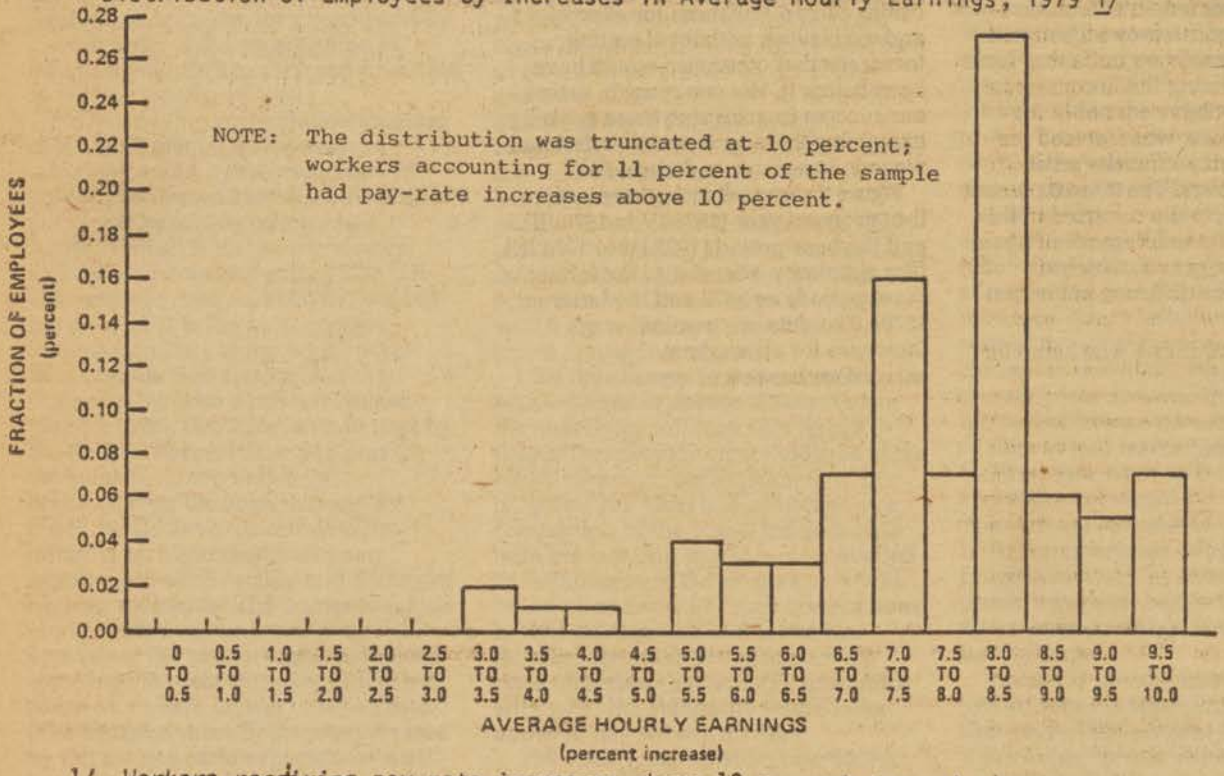
BILLING CODE 3175-01-M

Figure 1

Distribution of Employees by Increases in Average Hourly Earnings, 1978 1/



Distribution of Employees by Increases in Average Hourly Earnings, 1979 1/



1/ Workers receiving pay-rate increases above 10 percent are not shown.

BILLING CODE 3175-01-C

It is clear from these distributions that the bulk of the increases was redistributed from the 8½-to-10-percent to the 7-to-9-percent range between 1978 and 1979. Moreover, there is no evidence of an upward shift of the concentration of workers at the lower end of the distribution—i.e., no evidence of a tendency for the ceiling to become also a floor. As a result, the average (mean) pay increase was lowered from 8½ percent to 8 percent. The downward shift in the distribution between 1978 and 1979 would be even more pronounced if we were to show real rather than nominal wages, because the rate of increase in the CPI rose from 8.3 percent to 12.1 percent in this same interval.

To summarize, despite the substantial inflationary pressures on wages during the first program year, there was a downward shift in the upper range of wage increases and no upward shift in the lower part of the range. The fact that a substantial number of workers received increases just above 7 percent is largely the consequence of the various exceptions and exclusions incorporated into the standard to avoid inequities and market distortions. We examine these adjustments in detail in Section II–B, which also contains an analysis of wage distributions drawn from the data supplied by individual companies.

4. *Simulation Results.* The previous sections provide impressionistic evidence that the standards program was reasonably effective in preventing the spillover of the energy-price surge into the industrial wage/price structure. The relatively modest escalation in wage inflation and in the underlying inflation rate (compared to the much greater escalation of the overall inflation rate) supports the view that the standards had some effect in restraining wage and price increases.

In order to assess rigorously the effectiveness of a program whose purpose is to alter the course of events, it is necessary to estimate (as best one can) what would have happened in its absence. Obviously it is not possible to perform an experiment over the life of the program that would compare what would have happened both with and without it. It is possible, however, to construct models that predict the behavior over time of the relevant variables and to use such models to simulate what would have happened to these variables in the absence of the program (and of any other structural changes that may have occurred in the wage/price process that could have caused the results to differ from what would have been predicted from historical experience). A comparison of the simulated results with what actually happened allows one to assess the effect of the program, assuming that the advent of the standards was the principal structural change in that process.

Because of numerous statistical problems, constructing wage/price models that generate reliable simulations over the program period is difficult. Some preliminary work on this problem has been done by the Council of Economic Advisors (see the *Economic Report of the President,* January 1980) and by the Council (see our *Interim Report on the Effectiveness of the Pay and Price Standards,* May 6, 1980).

Using a variety of models developed by others as well as its staff, the CEA estimates that the annual rate of growth of wages during the first program year would have been 1 to 1½ percentage points greater were it not for the standards. Our simulation exercises suggest that the annual rate of growth of average hourly earnings was 1.8 to 2.0 percentage points less than it would have been without the program. We also estimate that the CPI-based underlying rate of inflation (the CPI less the costs of food, energy, used cars, and home purchase, finance, taxes, and insurance) would have been 1.1 to 1.5 percentage points higher; hence, the overall inflation rate—assuming that the program had *no* effect on the costs of food, energy, used cars, and home purchase, finance, taxes, and insurance—would have been one-half to three-quarters of a percentage point higher.

These simulation results suggest that the program had a greater restraining effect on wages than on prices. There are two major reasons for this difference. First, the price standards could not and should not have constrained the prices of primary energy goods, houses, interest rates, and food at the farm; hence, the effect of the price standard on the covered sector is diluted when it is evaluated on the basis of its effect on the entire Consumer Price Index. Second, even within the covered sector, there was more slippage on the price than the wage side, primarily because of the unavoidable passthroughs of energy and other raw-material costs.

It would, therefore, be incorrect to conclude from these simple comparisons that the standards bore discriminately unfairly on wages. In fact, labor's share of total income was not compressed relative to the profit share. Since the program was announced, the profit share has *decreased* from 10.0 percent to 8.6 percent, while labor's share has *increased* from 75.4 percent to 76.4 percent. Almost half of the increase in labor's share, however, is attributable to rising social insurance taxes; the share of wages and salaries plus private fringe benefits increased by only 0.5 percentage points—from 65.9 percent in 1978:III to 66.4 percent in 1980:I (see Table 3). More important, simulation studies carried out by the Council in its *Inflation Update* (June 12, 1980) suggest that the observed changes in income shares during the program period are explained largely by business cycle variables—i.e., that the program had no (statistically significant) effect on income shares. This is not surprising, as the program was designed to be neutral with respect to income shares.

Table 3.—*National Income Shares During the Program Period*

[Percent]

	Corporate profits [1]	Interest income	Rental income [2]	Proprietors income [1]	Labor compensation		
					Total labor compensation	Social insurance taxes	Wages, salaries, and private fringe benefits [3]
1978:III	10.0	6.4	1.5	6.7	75.4	9.5	65.9
1978:IV	10.2	6.5	1.5	6.9	75.0	9.4	65.6
1979:I	9.6	6.6	1.5	6.9	75.5	9.9	65.6
1979:II	9.3	6.6	1.4	6.8	75.9	9.9	66.0
1979:III	9.3	6.8	1.4	6.7	75.9	9.8	66.1
1979:IV	8.9	7.0	1.4	6.8	76.0	9.8	66.2
1980:I	8.6	7.3	1.3	6.4	76.4	10.0	66.4

[1] Before taxes with inventory valuation adjustment and capital consumption adjustment.

[2] With capital consumption adjustment.

[3] Fringe benefits include employer payments for private pension, health and welfare funds, compensation for injuries, directors' fees, and pay of the military reserves.

Source: U.S. Department of Commerce, Bureau of Economic Analysis.

B. Analysis of Company-Specific Pay Data

As part of its monitoring effort, the Council collected data on pay-rate increases granted during the first program year by compliance units with 10,000 or more employees. These data shed additional light on the effects of the program on wages.

The pay standard requires companies to partition workers into three categories: those employees subject to a collective-bargaining agreement, all management employees, and all other (nonmanagement nonunion) employees. Hence, separate statistics are available for these three groups. In all, the pay reports cover 7½ million workers—close to a third of them in management units, about a fifth in collective-bargaining units, and the rest in the all-other category. The reports do not cover workers excluded under the low-wage exemption (those with straight-time hourly wages of $4.00 or less on October 1, 1978) or collective-bargaining units whose contracts were not renegotiated during the first program year. By subtracting these excluded groups from the total work force, we estimate that the number of workers covered by the pay standard in the first year was 48 million; thus, the pay-reporting forms encompass about 15½ percent of the covered work force.

The average increase in wages plus fringe benefits (before adjustments for exclusions and exceptions) for workers in the reporting universe was 7.6 percent in the first year of the program—11.0 percent for union workers and 6.6 percent for both the management and nonmanagement nonunion groups combined. (See Table 4.) The discrepancy between this 7.6 percent and the 8.6-percent increase in private hourly compensation, in fiscal-year 1979 for the entire economy (see subsection A) is attributable to several factors.

First, the applicable periods for the data reported in Table 4 do not conform precisely to the Council's first program year (essentially fiscal-year 1979). For example, the first year of a collective-bargaining agreement signed late in the first program year would extend well into the second program year.

Second, many of the collective-bargaining contracts contain cost-of-living adjustment (COLA) clauses, and the cost of these, as reported to us, are based on company assumptions about the prospective inflation rate. Other data supplied by these companies indicate that they assumed, on average, an inflation rate of about 9.4 percent-substantially below the 13.5 percent that the CPI actually increased, on average, during the first year of collective-bargaining agreements signed during the first year of the program (estimated roughly as the average of the CPI increases over the nine annual periods, September 1978 to September 1979, October 1978 to October 1979, and so on up through May 1979 to May 1980). With an assumption of an average recovery rate of 60 percent (i.e., that a one-percentage-point increase in the CPI results in an average COLA-payment of 0.6 percentage point), this average under-forecast of the CPI increase resulted in a 2½ percentage-point underestimation of COLA payments. Because approximately 3 percent of the workforce signed collective-bargaining agreements with such clauses during the first program year, this undervaluation accounts for about 0.1 percentage point of the one point difference between the reported increase and the national aggregate increase.

Another factor explaining this disparity is the exclusion from the reporting sample of the increases under collective-bargaining agreements signed before the announcement of the program. We estimate that these averaged 8.1 percent and that the affected workers account for about 14½ percent of the total workforce. Thus, the exclusion of these workers from the reporting universe accounts for another 0.1 percentage point of the 1.0 point disparity.

Finally, the low-wage exemption accounts for a substantial share of the disparity. Approximately 35 percent of the workforce was excluded under this exemption. We estimate that, on average, these excluded workers received 9½-percent increases during the first program year (the increase in the minimum wage was 9.4 percent, and workers slightly above the minimum wage received comparable increases in order to avoid wage compression). After appropriate weighting of these percentage increases by the low level of wages involved, we estimate that the low-wage exemption accounts for about 0.4 percentage point of the one-point difference.

The three quantified factors—underestimation of the costs of COLA clauses, exemption of increases under pre-existing contracts, and the low-wage exemption—account for about six-tenths of the 1.0-percentage-point disparity between the increase in the national aggregate wage level and the increases shown by our reporting universe. The small remainder can be attributed to statistical error and the possible differences between the wage increases of reporting and nonreporting compliance units (for example, most of the workers covered by construction and teamsters settlements—which typically provided for very large increases—are in compliance units with less than 10,000 workers).

As noted above, the average reported first-year increase under collective-bargaining agreements was 11.0 percent. The average annual increase over the lives of the contracts was 8.9 percent. The first-year pay standard restricted the increase in each year of a multi-year contract to no more than 8 percent and the average annual increase to no more than 7 percent. The fact that the reported increases are above the respective limitations does not necessarily mean that these increases

Table 4.—*Pay Data for Reporting Units* [1]

	All workers [2]		Collectivebargaining units [2]		Management units	All other units
Number of workers	7,430,162		1,399,054		2,415,395	3,615,713
Percent of workers	100.0		18.8		32.5	48.7
	First year	Annual average over life of contract	First year	Annual average over life of contract		
Unadjusted percentage pay-rate increase	7.6	7.1	11.0	8.9	6.6	6.6
Adjusted percentage pay-rate increase	6.3	6.1	7.9	6.8	5.8	5.8
Adjustment	1.3	1.0	3.1	2.1	0.8	0.8

[1] The percentage increases are obtained by averaging across employee units, using base-period employment as weights.
[2] Pay increases for collective-bargaining units are calculated in two ways: The first-year calculations represent the costs of the first year of collective-bargaining agreements negotiated during the program period, while the annual-average data pertain to the (geometric) average annual rate of increase over the life of the contract. Because of front-loading, the first-year estimates for multi-year contracts are usually larger than the annual averages.

were not in compliance with the pay standard. For the purpose of evaluating compliance, the pay standard provided for several departures from actual costs. The most important of these adjustments is attributable to the CPI assumption used in evaluating COLA's. The 6-percent inflation-rate assumption stipulated by the standards turned out to be below the actual inflation rate and below the assumptions made throughout the year by employers. In addition, the standard provided a number of exceptions and exclusions, in order to assure that it does not generate unnecessary inequities or inefficiencies.

Adjustments such as these lowered the average pay-rate increases of all three categories of employees, as measured under the standard; but the adjustment was especially dramatic in the case of collective-bargaining units. The average downward adjustment for union workers was 3.1 percentage points for the first year and 2.1 percentage points for the annual average over the lives of the contracts. In contrast, the average adjustment for both management and nonmanagement nonunion units was 0.8 percentage points. Thus, the average chargeable first-year increase for union workers was 7.9 percent (slightly below the 8-percent limit), and the average annual chargeable increase over the lives of contracts signed during the first year was 6.8 percent (slightly below the 7-percent limit). The average chargeable increase for both management and nonmanagement nonunion workers was 5.8 percent (substantially below the pay standard). The average downward adjustment to the average increase of 7.6 percent for all workers in the first year was 1.3 percentage points, which results in an average chargeable pay-rate increase of 6.3 percent.

The adjustments for each group are summarized in Table 5. (The components are described in detail in Appendix A.) This table shows that half of the discrepancy between reported actual and chargeable pay-rate increases is attributable to discrepancies between the COLA assumption stipulated by the standards and the evaluations made by the employers. As would be expected, this COLA adjustment was most significant in the case of union employee units, accounting for 1.5 of the 2.1 percentage points of adjustments for these workers; it was also important for the nonmanagement, nonunion units, accounting for more than a third of their total adjustment. The two "maintenance of benefit" adjustments for health insurance and pensions also contributed substantially to the disparities between actual and chargeable pay increases for all groups. The exclusion of overages attributable to formal annual pay plans announced before the beginning of the program were important for both categories of nonunion workers. The exclusion of promotions and qualification increases for employee units using the "fixed population" method of calculation was significant only for management units; exclusions for incentive pay, on the other hand, were a significant factor only for the nonmanagement, nonunion units.

Table 5.—Contributions of Various Components to Adjustments of Wages and Salaries [1] (FIRST PROGRAM YEAR)

	All workers	Union [2]	Management	Others
Total adjustment [3]	1.0	2.1	0.8	0.8
Contribution of: COLA evaluation	0.5	1.5	0.1	0.3
Maintenance of health benefits	0.1	0.2	0.1	0.1
Pension plans	0.2	0.2	0.2	0.1
Formal annual pay plans	0.1	NA	0.2	0.1
Excluded promotions and qualification increases	0.0	NA	0.1	0.0
Excluded incentive pay	0.0	0.0	0.0	0.1
Exceptions	0.1	0.3	0.1	0.1

[1] See Appendix A for descriptions of these adjustments.
[2] Annual average over the life of the contract.
[3] Components may not add to total because of rounding (effect of weighted average method is negligible, see Appendix A).

Each of the foregoing adjustments of actual pay increases was an integral part of the basic standard and was therefore self-administered by the companies. The pay standard also allowed for special exceptions for tandem relationships between different employee units, increases necessitated by acute labor shortages, the exchange of pay increases for phasing out of productivity-inhibiting work rules, and the correction of inequities. The slippage in the standards accounted for by these Council-granted exceptions was significant for all three groups, but it was much larger for the union groups than for management and nonmanagement, nonunion groups.

While much can be learned by examining the *averages* of the pay-rate increases, there is also something to be learned from the *distributions*. Figures 2, 3, and 4 show the distribution of both actual and chargeable pay-rate increases for all reporting workers, union employee units, and nonunion employee units. (We do not show distributions for the management and nonmanagement units separately because the two are similar.) In each case, the estimates are weighted by the number of employees in each compliance unit.

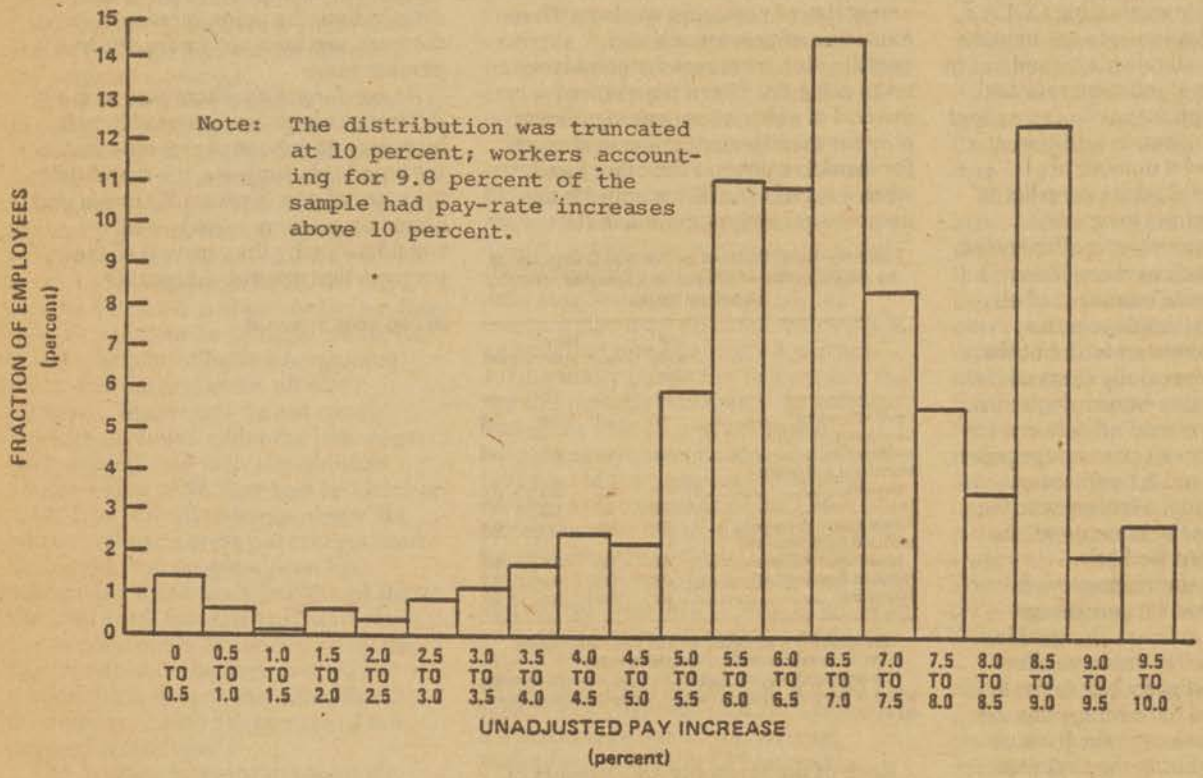
The top charts in the three figures show that unadjusted rates of pay increase were widely dispersed and often considerably above the 7-percent standard. The nonunion pay-rate increases roughly follow a normal distribution; the union increases, in contrast, are bunched in the 8½-to-9½-percent range.

As our foregoing discussion of the differences between reported actual increases and those chargeable under the standards suggests, the disparity in the rates of pay increase for union and nonunion workers is narrowed considerably by the removal of the portions that are not chargeable.

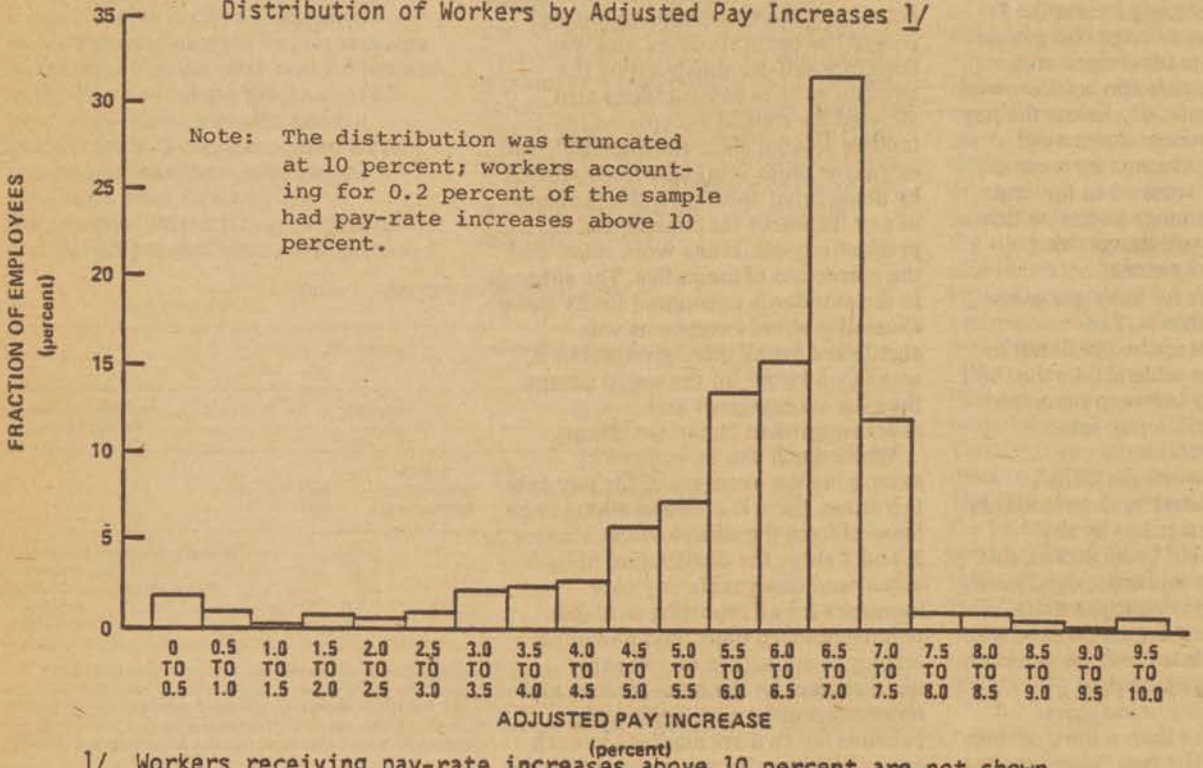
BILLING CODE 3175-01-M

Figure 2

Distribution of Workers by Unadjusted Pay Increases 1/



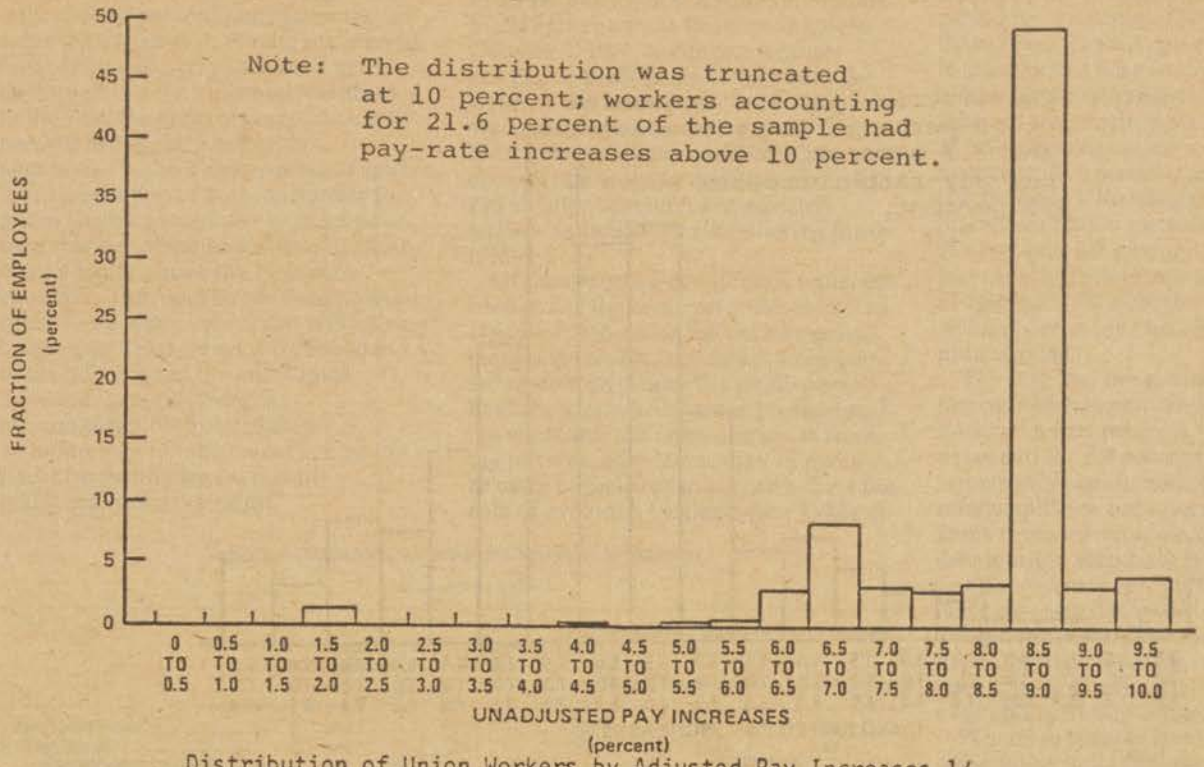
Distribution of Workers by Adjusted Pay Increases 1/



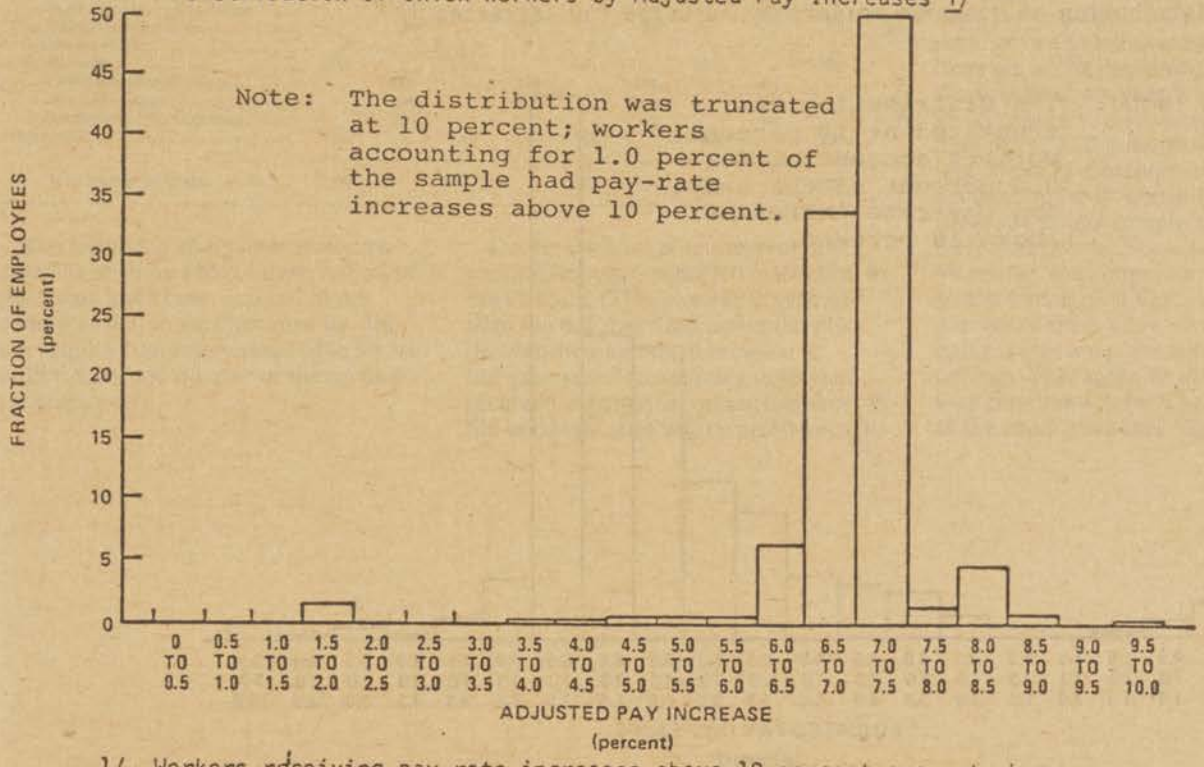
1/ Workers receiving pay-rate increases above 10 percent are not shown.

Figure 3

Distribution of Union Workers by Unadjusted Pay Increases 1/



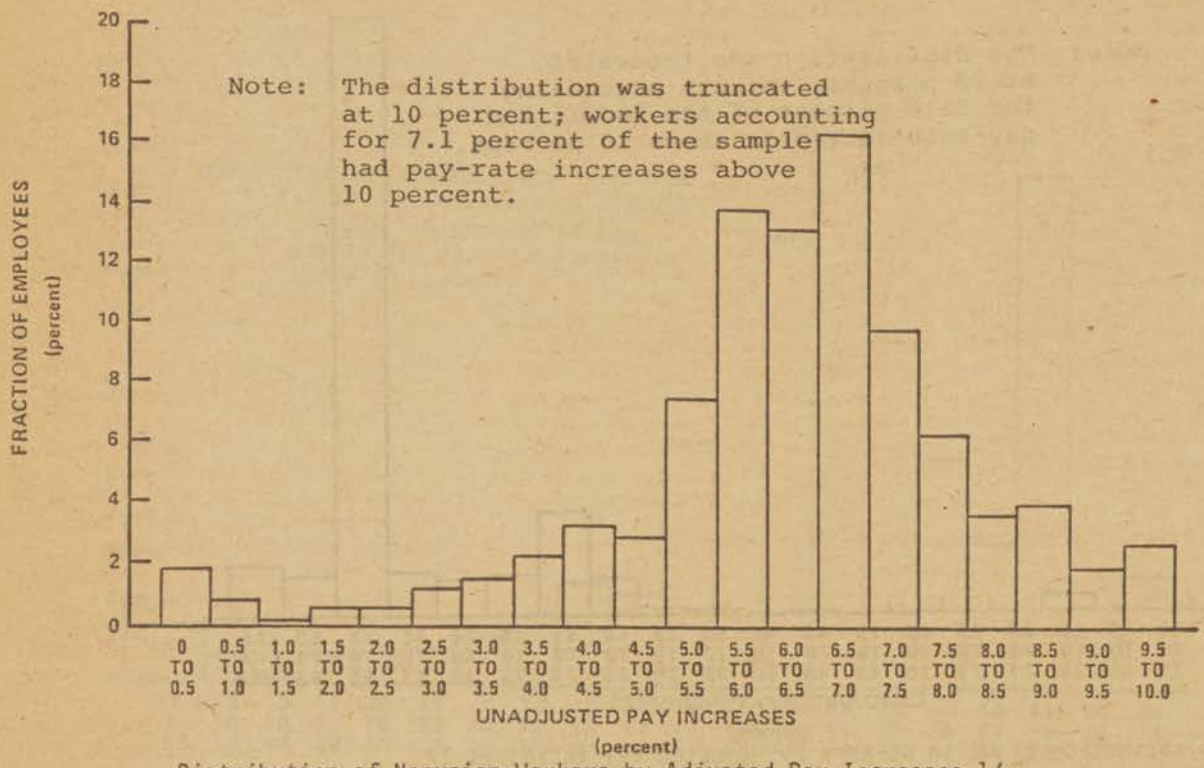
Distribution of Union Workers by Adjusted Pay Increases 1/



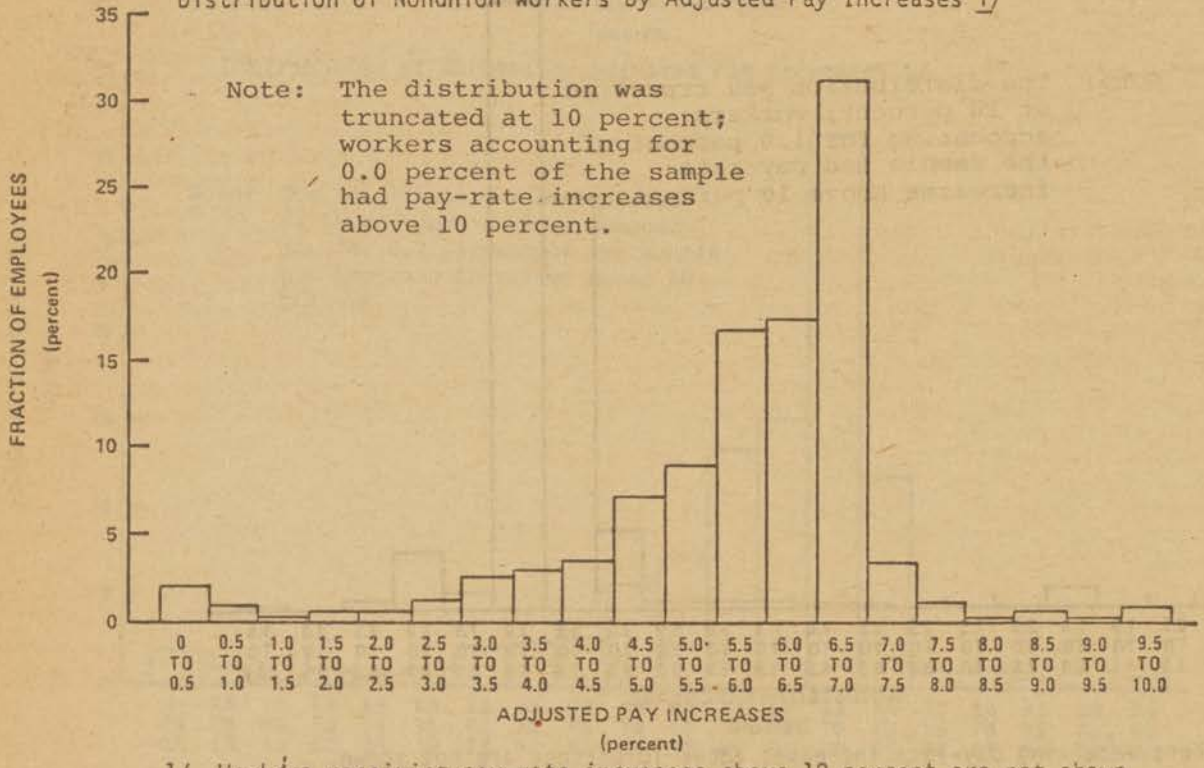
1/ Workers receiving pay-rate increases above 10 percent are not shown.

Figure 4

Distribution of Nonunion Workers by Unadjusted Pay Increases 1/



Distribution of Nonunion Workers by Adjusted Pay Increases 1/



1/ Workers receiving pay-rate increases above 10 percent are not shown.

BILLING CODE 3175-01-C

With these adjustments, almost a third of the nonunion workers are in the 6½-to-7-percent range, sixty-five percent are in the 5½-to-7-percent range, and only about 5 percent had increases of more than 7 percent. On the other hand, half of the union pay increases are slightly above the 7-percent standard—in the 7-to-7½-percent range. About 34 percent are slightly below the standard—in the 6½-to-7-percent range. The distribution of wage increases for union workers was heavily influenced by a number of major settlements that were slightly above the 7-percent standard. The most notable cases were rubber and autos, where the collective-bargaining agreements were found out of compliance but the companies involved were not listed as noncompliers because of their commitments to take corrective action (most frequently by exercising additional price restraint).

C. Analysis of Company-Specific Price Data

In the first program year, we asked all firms with sales of $250 million or more in the last complete fiscal year before October 2, 1978, to file price, gross-margin, or profit-margin data with the Council. Approximately 1,300 companies were of this size; in their reports they disaggregated their operations into 2,101 compliance units. In addition, we asked 235 smaller companies in selected industries to file price-monitoring forms (PM–1s).

Of the reporting compliance units, 801 filed under the basic price deceleration standard, 546 under the various gross-margin standards available to selected industries, 815 under the profit-margin limitation, and 9 under the professional-fee standard; 165 were exempted from the price standards because 75 percent or more of their revenues came from the sale of excluded products (see Table 6).

Table 6.—*Distribution of Number of Companies by Standard*

[First program year]

	Total by standard	Percent of total	No. of companies reporting by size of company		
			Over $500M	$250–$500M	Below $250M
I. Price deceleration	801	34.3	538	169	94
II. Gross margin	546	23.4	345	155	46
—Percentage gross margin	387	16.6	245	128	14
—Food mfg. proc. gross margin	91	3.9	68	20	3
—Refiners gross margin	68	2.9	32	7	29
III. Professional fee	9	0.4	4	4	1
IV. Profit margin	815	34.9	471	261	83
—CWPS granted/pending	206	8.8	183	21	2
—Self-administered	375	16.1	135	176	64
—Insufficient product coverage	234	10.0	153	64	17
V. Exempt	165	7.1	105	49	11
Total number of filings	2,336	100.1	1,463	638	235

The following analysis is based on samples of these PM–1 forms; not all of the forms have been entered in our computer file, in part because we did not require computer-compatible forms until the second quarter of the second program year.

During the first program year, 871 compliance units reported price data to the Council. (This number is greater than the 801 that filed under the price deceleration standard because it includes some compliance units that received exceptions, permitting them to file under the alternative profit-margin limitation, on the grounds of uncontrollable costs or inability to compute.) The revenue-weighted average price increase during the base period for a sample of 83 percent of these firms was 6.35 percent. This translates to a 5.8-percent average allowable price increase after account is taken of the required price deceleration of 0.5 percentage point and the maximum (9.5 percent) and minimum (1.5 percent) allowable program-year increases. This is virtually identical to the 5.75-percent average allowable increase that we estimated on the basis of aggregate data for the entire economy when the standard was first promulgated.

The fact that the actual average price increase of 9.36 percent for this group during the first program year far exceeded the 5.8-percent limit does not necessarily signify widespread noncompliance because many of these firms received exceptions to the price deceleration standard. Because this sample underrepresents compliance units that received profit-margin exceptions (since fewer of them filed price data) it cannot be used to estimate the slippage attributable to the availability of this exception.

When we remove from the sample the compliance units that received profit-margin exceptions, we find that the revenue-weighted average price increase of the remaining units during the first program year was 6.44 percent, as compared to an average allowable increase of 5.92 percent for this group (see Table 7). Compliance units accounting for 87 percent of the revenues in this sample reported price increases below their allowables. Moreover, the compliers were highly concentrated near those allowables: 50 percent of them were no more than a half percentage point below their ceilings. This suggests that the standard was constraining for a large proportion of the companies (see Figure 5).

Table 7.—*Compliance Units Filing Under the Price-Deceleration Standard*

	Revenue share [1]	Fraction of compliance units [2]	Average allowable price increase (percent)	Average actual price increase (percent)	Difference (percent)	Contribution to total price increase (percentage points)
	(1)	(2)	(3)	(5)	(6) (4)–(3)	(7)
Reported compliance with price standard	.8715	.8217	5.77	4.59	−1.18	4.00
Notices of probable noncompliance (sent or in process)	.0821	.0503	7.43	22.18	14.75	1.82
Under analysis	.0465	.1280	6.07	13.33	7.26	0.62
Total	1.0000	1.0000	5.92	6.44	0.52	6.44

[1] Total revenues (thousands) = $227,351,071.
[2] Total compliance units = 656.

Eighteen percent of the compliance units, accounting for 13 percent of the revenues, reported price increases above their allowables. Not all of them are out of compliance; many will ultimately be found to have properly self-administered exceptions, or to have been eligible for alternative standards, or to have misinterpretated the standards or made calculation errors.

Thirty-three notices of probable noncompliance have been sent, or are in process of being sent, to companies in this sample. Analyses of the other 84 cases of overage are continuing, usually in discussions with the company. Some of these discussions have resulted in the companies taking corrective action to come back into compliance. (There have been over 20 publicly announced corrective actions totaling over $130 million.)

The 6.44-percent price increase by compliance units in the sample that were not granted profit-limitation exceptions is, of course, considerably below the 12.5-percent increase in the CPI during the first program year. The 6.1-point difference between these two figures is explained by three factors: (1) The rapid increases in some components of the CPI that are not covered by the standards (most notably mortgage interest costs); (2) the passthrough of some large raw-material cost increases (most notably crude-oil costs) under the profit-margin limitation and the various gross-margin standards available to particular industries; and (3) some noncompliance.

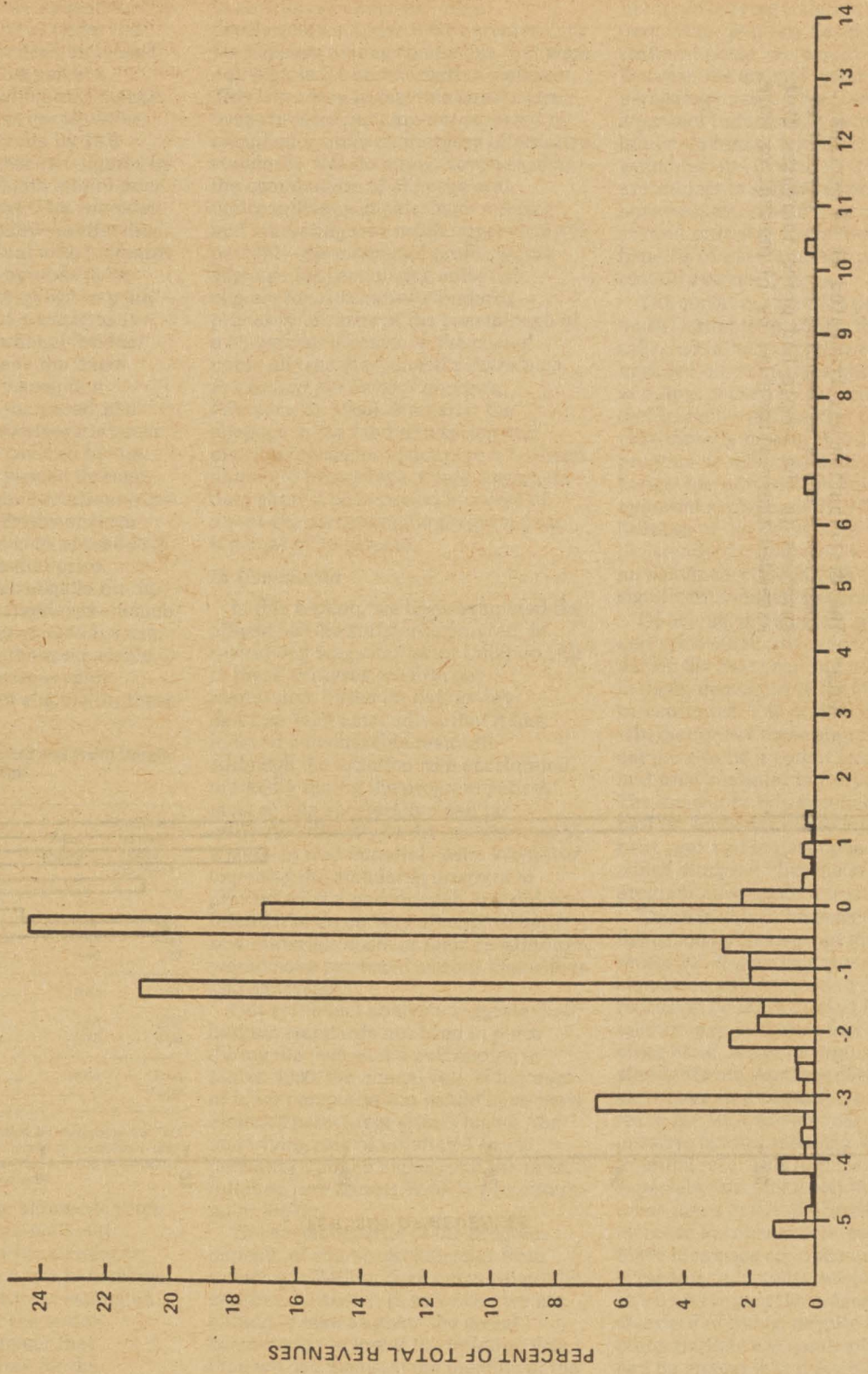
We have already discussed the first of these, in contrasting the behavior of prices covered and the prices not covered by the standards. However, since the sample includes some compliance units that were eligible for alternative standards or that self-administered exceptions, the 6.44-percent price increase is not indicative of actual price increases by firms on the price deceleration standard. Thus, to estimate the slippage and noncompliance attributable to the profit-margin exception, we must restrict the sample of compliance units filing price data further to exclude all firms that were eligible for an alternative standard: this cuts the sample to 317. Compliance units in this sample that filed under the price deceleration standard had a revenue-weighted program-year price increase of 5.57 percent; their allowable increase was 6.61 percent. The concentration of the price increases of this group just below the allowable is even more promounced than in the larger sample (see Figure 6), probably because this smaller sample excludes many companies that have self-administered exceptions or that have converted to an alternative (gross margin) standard.

Compliance units in this sample that were granted profit-margin exceptions on average exceeded by 13.23 percentage points the price increases they would have been allowed had they remained on the basic price deceleration standard. (We cannot estimate the portions of this excess attributable respectively to noncompliance and to the fact that the profit-margin exception simply permits larger price increases.) Slippage and noncompliance thus contributed 4.66 percentage points to the total price increase for this group (obtained by multiplying 13.23 by the revenue share of companies under the profit-margin limitation).

BILLING CODE 3175-01-M

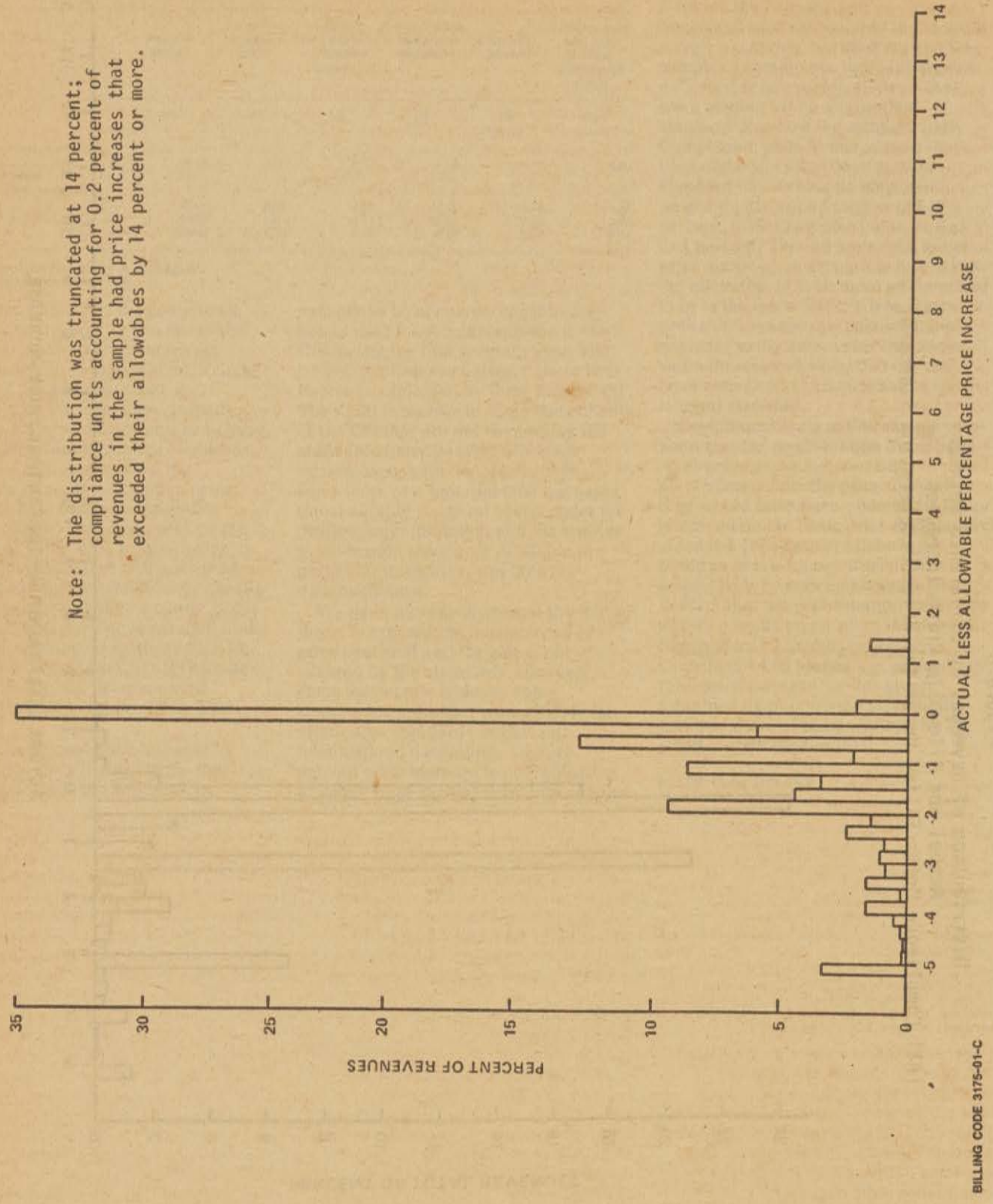
Figure 5

Distribution of Revenues by Difference Between Actual and Allowable Price Increases (All Compliance Units Filing Under the Price Deceleration Standard)



Note: The distribution was truncated at 14 percent; compliance units accounting for 5.77 percent of revenues in the sample had price increases that exceeded their allowables by 14 percent or more.

Figure 6
Distribution of Revenues by Difference Between Actual and Allowable Price Increase
(All Compliance Units Filing Under the Price Deceleration Standard that are not Eligible for an Alternative Standard)



Note: The distribution was truncated at 14 percent; compliance units accounting for 0.2 percent of revenues in the sample had price increases that exceeded their allowables by 14 percent or more.

BILLING CODE 3175-01-C

These calculations are summarized in Table 8. Compliance units under the price deceleration standard increased prices on average by 5.6 percent, whereas companies with profit-margin exceptions (to the price deceleration standard) increased theirs by 19.8 percent. Weighting these two figures by revenue shares, we obtain a total price increase of 10.6 percent. This increase, calculated from company specific data, is remarkably consistent with increases in comparable economy-wide price indexes during the first program year, which ranged from 9½ percent to 11 percent. The Gross National Product deflator rose 9.6 percent; the fixed-weighted Personal Consumption Expenditure Deflator increased 10.0 percent; the CPI less mortgage interest costs—which are not covered by the standard and are not passed through under the profit-margin limitation—rose 10.5 percent; and the Producer Price Index for finished goods increased 11.2 percent. This suggests that price increases of companies eligible for the various gross-margin standards—which are not included in our sample but are, of course, included in the comparable aggregate indexes—were roughly equivalent to those not eligible for these alternatives.

Table 8.—The Price Standard and Profit-Margin Slippage

	Price change	Contribution to total price increase [1]
Price-decelaration standard		
Allowable	6.61	4.28
Underage	−1.44	−.93
Excess	0.40	.26
Acutal	5.57	3.61
Profit-margin limitation		
Allowable	6.58	2.32
Slippage and Noncompliance	13.23	4.66
Actual	19.81	6.98
Total		10.59

[1] The contributions were calculated by multiplying the first column by the relative revenue shares of compliance units under the price deceleration standard and the profit-margin limitation (.6476 and .3524, respectively).

Because the average allowable price increase for compliance units not eligible for the alternative standards was 6.6 percent—about one percentage point above the 5¾ percent estimated average allowable for the entire economy—it would appear that compliance units eligible for the alternatives had below-average base-period price increases. This implies, in turn, that the noncompliance and slippage among companies eligible for the various gross margin test (i.e., the difference between their actual price increases and what they would have been allowed under the price deceleration standard) was greater than the slippage among companies that were not eligible for an alternative standard. This is no way to test this conclusion, because price data are not reported by compliance units under these alternative standards. We do know, however, that the combination of slippage and noncompliance in petroleum refining and marketing was much larger than 4½ percent—the estimated profit-margin slippage for compliance units not eligible for alternative standards—primarily becasue of the passthrough of a 56-percent increase in the cost of crude oil (see the Council's *Petroleum Prices and the Price Standards*, February 25, 1980). Similarly, the slippage in the food processing and distribution sector appears to have been about 5½ percentage points: aggregate data show a base-period increase of about 4½ percent and a program-year increase of 10 percent.

D. Conclusion

In this section, we have examined the efficacy of the standards program in restraining wage and price inflation. All of these analyses confirm our impression, based on day-to-day dealings with companies, that it has induced considerable restraint. Although the inflation rate accelerated markedly during the program period, most of this acceleration can be attributed directly to the passthrough of a surge in raw-material costs. We never expected the standards program to prevent such a passthrough, nor did we intend it to do so: any attempt to limit raw-materials costs or their passthrough would have produced serious distortions and shortages.

Our statistical analysis suggests that, had the standards not been in place during the year and a half ending in March 1980, the annual rate of increase of labor compensation would have been almost 2 percentage points higher, the underlying rate of inflation 1 to 1½ percentage points higher, and the overall inflation rate almost ½ to ¾ percentage point higher.

The social benefits of the program depend, of course, on the gains from reducing inflation. Such gains cannot be measured directly. If, however, we are willing to take as given the social commitment to lower the inflation rate, then we can measure the benefits of the program by referring to the social costs of reducing the inflation rate by alternative methods—namely, additional fiscal and monetary restraint. A conservative estimate, based on recent econometric evidence, is that, in order to generate a sustained lowering of the underlying inflation rate of 1 percentage point by fiscal and monetary restraint alone, we would have to increase the unemployment rate by 1 percentage point. This translates into a 2-percent reduction in output, or 47 billion dollars of lost GNP. These estimates are, of course, inferential and are subject to statistical error; nevertheless, even if they were off by several orders or magnitude, the social benefits of the standards program would remain extremely large.

The social costs of the program are much harder to quantify; they are reflected in the administrative burdens imposed on companies and in any loss of output caused by induced economic inefficiencies and market distortions. (The directly measurable costs of the program as reflected in the Council's budget are miniscule compared to the apparent social benefits.) Perhaps because of the substantial flexibility in the standards, however, we have seen no convincing documentation of significant induced inefficiencies.

Of course, documentation that the pay and price standards were beneficial during the first year and a half does not, in itself, demonstrate that they should be continued. The critical question is whether or not these standards can continue to be a potent force for wage and price restraint in the year ahead. The answer to this question depends in part on economic conditions during the next year and in part upon the degree to which strains within the standards program have made it less viable.

There is now a consensus view that the economy has moved into a recession. It may be argued that standards are not needed during recession because market forces will restrain pay and price increases. On the other hand, it can be argued that standards are most needed during a slowdown or a recession in order to make the slowdown work as much as possible toward reducing the underlying inflation rate. This argument is especially forceful when the recession takes place in the aftermath of a large increase in consumer prices, because these increases continue to provide pressures to increase wages in order to catch up for past decreases in the standard of living, despite the fact that labor markets are weakening. Finally, it can be argued that it is necessary to keep the standards in place to prevent another serious surge of inflation when the economy begins to recover in late 1980 or early 1981, particulary since the underlying rate of inflation is expected to hover near double-digit rates through most of the recession.

III. Major Issues in the Design of the Third-Year Price Standards

A. Threshold Issues

The foregoing analysis suggests that the standards have helped to limit the rate of inflation. Because inflation continues to be a serious problem, despite the onset of recession, we expect that the pay/price-standards program will be continued. We recognize factors which suggest the opposite, however. There is some basis for the view that the effectiveness of programs like these may diminish over time and that the distortions and inefficiencies they introduce—no matter how flexible their design and administration—become increasingly burdensome. In addition, the recession may tend to make such standards less useful. While, therefore, we expect to carry the present program into a third program year, we solicit public comment on the general question of whether a third year of pay and price standards following the general outlines of the first two years is a useful component of an anti-inflation program. We ask that those who respond in the negative give serious consideration to what alternative program, if any, would be more desirable.

Assuming that the present program is continued, there is another threshold question that must be resolved before deciding the form of the third-year standards: whether it is better to proceed, as in the past, with standards for a 12-month period, or alternatively, whether they should be reevaluated (and modified, if appropriate) within a more limited period of time (e.g., quarter by quarter or every six months). While it can be argued that more frequent modifications are preferable, especially in times when the economy is in an unusual state of flux, the mere possibility of changes in the standards during the year would subject companies to greater uncertainty and render them unwilling or unable to develop effective long-term compliance plans. And, if a major program change were in fact made, it would impose substantial additional administrative costs on both the companies and the Council.

In any event, retaining a 12-month concept for the third program year would not preclude us from modifying the standards during the year if changing economic conditions made this advisable. During the past year, for example, we initially set the third-quarter price limitation at the same level as for the entire two years, but at the same time announced that, if price developments earlier in the year suggested the need for more restrictive quarterly limits, the third-quarter ceiling might be adjusted downward. And then, in late March, after the annual rate of increase of the CPI reached 18 percent, we announced a tightening of the third-quarter limit. Similarly, we could loosen the standards within the framework of an annual program. For example, during this past year, we developed a modified standard for companies that use a significant amount of gold and/or silver, and we adjusted the price limitation for airline companies that had experienced large increases in fuel costs.

Assuming that we retain a 12-month program period, the remaining price-standard issues are best considered in the following order: (1) The price limitation versus cost passthrough, (2) the level of the aggregate price standard, (3) the choice of a base period, (4) adjustments to the base period, (5) the range of allowable price increases, (6) a one-year versus a three-year cumulative standard, (7) changes in the profit limitation, (8) excluded products, (9) modified price standards, (10) company organization, (11) self-administration of uncontrollable-cost exceptions, and (12) price prenotification. In discussing these issues and expressing our preferences for particular resolutions, we are influenced by the consideration that the less radical and extensive the changes, the more both the Council and the affected companies can benefit from their experience over the past two years. At the same time, some changes are necessary, and others might even reduce the administrative costs of the program.

B. Specific Issues

1. *The Price Limitation versus Cost Passthrough.* The basic price limitation is cast in terms of a company's average rate of price change for all of its products. This approach gives companies maximum opportunity to adjust their *relative* prices in response to varying demand and supply conditions, while providing for *overall* restraint in their pricing. The second-year standard limited a company's average rate of price increase over the first two program years to its average increase over the two-year base period. It has been suggested that this standard should be replaced by one permitting passthroughs of all costs (like the current profit limitation), rather than having profit restrictions apply only when companies are faced with uncontrollable cost increases or are unable to make price calculations. In the past, we have rejected this suggestion, preferring the price limitation for the following reasons:

- Price limitations involve fewer accounting complications and are easier to monitor than cost passthroughs.
- Price limitations do not vary with changes in costs. This provides companies with incentives to resist cost inflation.
- Price limitations permit firms the full benefits of increased productivity.
- So long as exceptions are provided for companies that cannot comply with the price limitations because of uncontrollable cost increases, there is no inherent inequity in having the price limitation as the basic standard. The Council has approved exceptions for full cost passthrough in individual cases and has approved passthroughs of particularly large, uncontrollable increases in the costs of specific inputs (e.g., gold and silver, and airline fuel).

These last specific adjustments demonstrate our commitment to enabling companies to remain on the price limitation, rather than their resorting to the cost-plus-profit limitation. It was to improve the likelihood of their being able to do so that the Price Advisory Committee recently recommended that we revise the overall price limitation upward for all companies to reflect the recent increase in the pay standard to the 7½-to-9½ percent range. In declining to follow that recommendation, we reasserted our preparedness to adjust price limitations for individual companies or industries on an *ad hoc* basis to account for unusually severe increases in cost, whether of labor or other inputs. We renew that pledge, and invite reasonable proposals to accomplish this objective.

2. *Establishing the Level of Aggregate Price Standard.* For the first and second program years, the aggregate price standard was derived from the pay standard, assuming a constant percentage markup of prices over unit labor costs (i.e., constant labor and nonlabor income shares) and a trend productivity growth rate of 1¾ percent (the average increase during the previous 10 years). If the nexus is retained in the third year, three determinations must be made: (1) The level of the pay standards, (2) the estimate of trend productivity, and (3) the difference in the amounts of slippage inherent in the pay and price standards.

The pay standard now in effect is a range of 7.5 percent to 9.5 percent. Under it, annual pay-rate increases are expected in normal circumstances to average about the midpoint of the range.

As a result of the recent collapse in productivity growth, the 10-year-average measure of trend productivity growth has decreased from 1.74 percent in 1977

to 1.35 percent in 1979. Some argue for the use of a more recent time period for calculating this variable, on the ground that the 10-year average overstates the current trend rate.

Conceptually, the measure of trend productivity should be based on relatively recent data, which are more relevant to current costs and pricing decisions. At the same time, the data must extend over a period sufficiently long to encompass experience from both the expansionary and contractionary phases of the business cycle, in order to produce a measure that is relatively stable and insensitive to cyclical influences.

The Council chose the 10-year period because it met these objectives. The ten years ending in 1977 incorporate approximately two complete business cycles and produce a relatively stable index. This can be seen clearly in Figures 7 and 8, which compare a ten-year trend with a six-year and a four-year trend, respectively.

Assuming an 8.5-percent pay standard and equal slippage for pay and price, the aggregate price standard for various productivity growth trends would be as follows:

Productivity trend:	*Aggregate price standard*
1.75 (current assumption)	6.75
1.35 (new 10-year trend)	7.15
1.25 (4-year trend)	7.25

BILLING CODE 3175-01-M

Figure 7
Growth Rate in Output Per Hour, All Persons, Private Business Sector
(annual data)

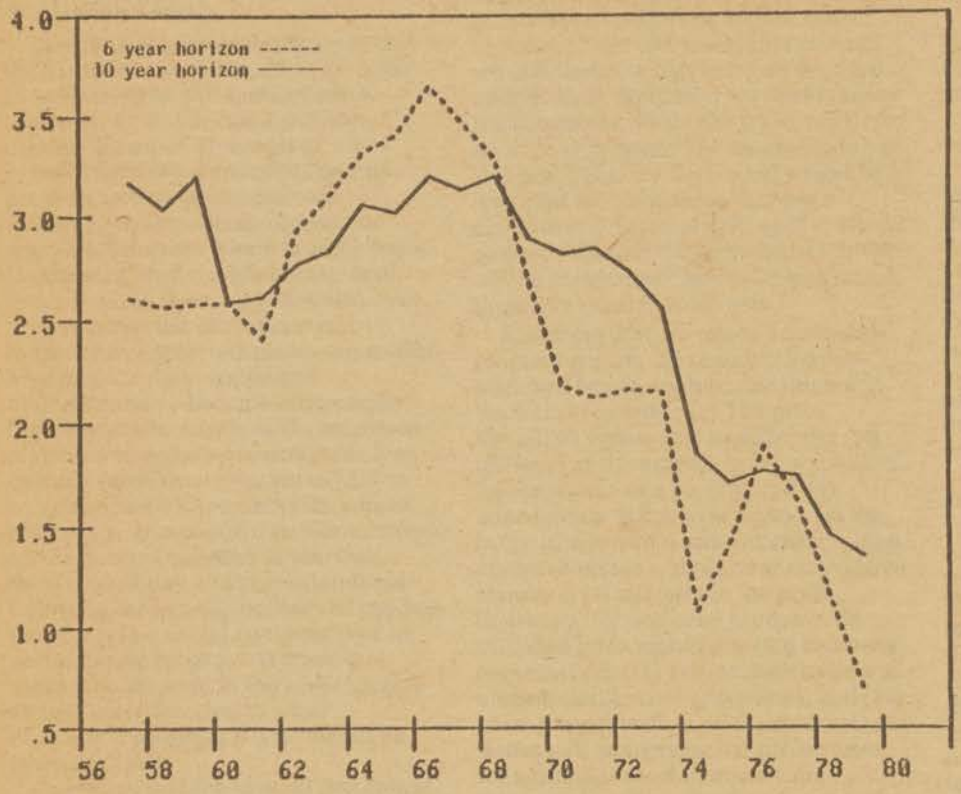
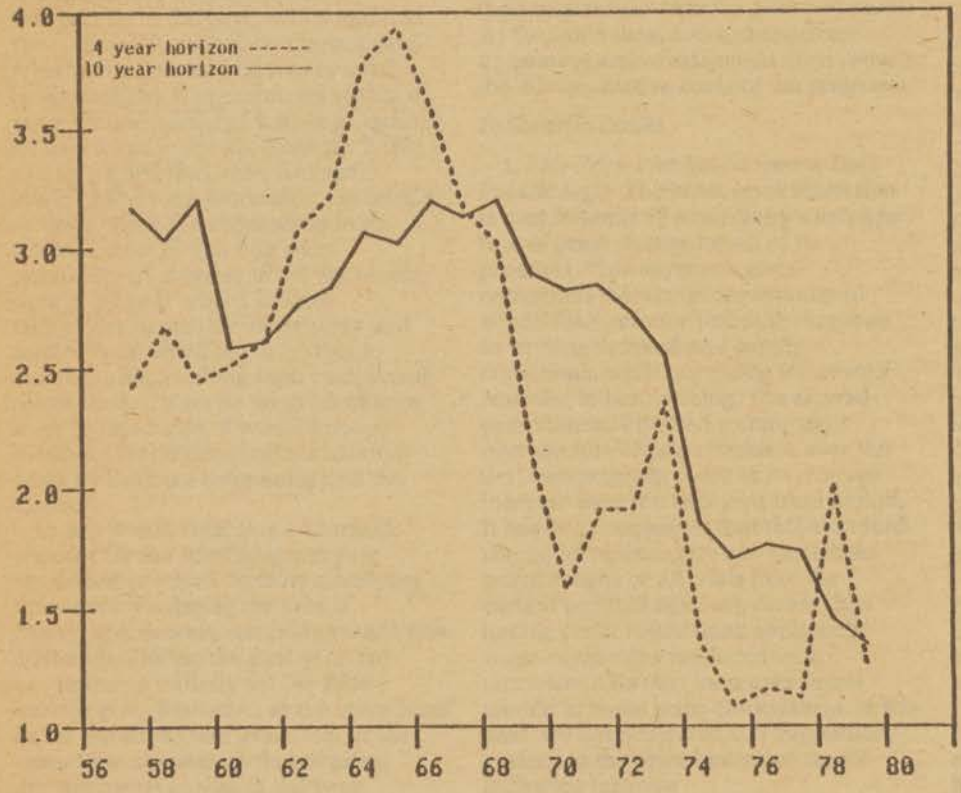


Figure 8
Growth Rate in Output Per Hour, All Persons, Private Business Sector
(annual data)



BILLING CODE 3175-01-C

As noted in Section II, the apparent slippage on both the pay and price sides during the first program year was about 1½ to 2 percentage points. Most of the slippage in the price standard is attributable to the passthrough of substantial raw-material cost increases; a large portion of the pay slippage resulted from a 9.4-percent increase in the minimum wage, which affected the wage increases of the 35 percent of the workforce excluded by the low-wage exemption. There should be less slippage in the pay standard during the second and third program years, because the minimum wage increased by only 6.9 percent in 1980 and will go up by 8.0 percent in 1981; both increases are below the 8.5-percent midpoint of the current pay-range standard. There should be less slippage on the price side as well, because raw-material price increases should be much more moderate as world economic growth slows. Whether the equality of slippage in the pay and price standards can be expected to continue is uncertain.

Once an aggregate level is established, the next step is to compare it to the aggregate base-period price change and then translate that into company-specific price limitations. Thus, for the first two program years, the aggregate two-year price standard was 13 percent; because the aggregate price change during the 1976–77 base period also was 13 percent, the two-year price limitation for each company was set equal to its cumulative price increase over the 1976–77 period.

Similar logic would be followed to establish company-specific third-year price limitations. The three-year aggregate standard would be calculated by compounding the aggregate two-year standard (13 percent) with the aggregate price standard for the third year. For example, if a 7.15-percent standard were chosen for the third year, the aggregate three-year price standard would be 21.1 percent (([1.13 x 1.0715]−) x 100).

The difference between the aggregate three-year standard and the base-period rate of price increase compounded over three years (20 percent) would be used as the adjustment factor to calculate company-specific three-year price limitations. Continuing the above example, we subtract 20.0 percent from 21.1 percent to obtain the adjustment factor of 1.1 percentage points. Thus, an individual firm would calculate its allowable three-year price increase by compounding its average annual base-period price increase over three years and adding 1.1 percentage points.

3. *The Choice of a Base Period.* The logical structure described in subsection 2 implicitly assumes that there is some continuity over time in the differences among companies and industries in their respective productivity and cost trends, and that their relative price changes in the recent past adequately reflect these differences. In other words, the standard assumes that, in general, industries that experienced relatively rapid productivity growth (hence low rates of cost increase and low rates of price increase) in 1976–77 will continue to do so during the program period and that their allowable price increases should be correspondingly lower.

For the first and second program years, we selected the 1976–77 two-year period as the reference period for calculating the price limitation. We excluded earlier years because underlying cost trends had been distorted by the 1974–75 recession and the large energy price increases in 1973/74. We excluded the period since 1977 to avoid penalizing companies that had reduced their rates of price increase in cooperation with the Administration's informal program, announced in January 1978.

These advantages of 1976–77 as a reference period are still valid for the third program year. Moreover, retaining the same base period for the third program year minimizes the administrative costs of the program for both companies and the Council.

There is some sentiment, however, for moving the base period forward on the ground that it would then more closely reflect current cost trends and product mixes. Such a change also would expand the coverage of the program by including products introduced and companies formed during the first two program years.

Nonetheless, incorporating 1978 in the base period would be inequitable, for it would penalize companies that had exercised price restraint under the Administration's anti-inflation program during that period. Incorporating 1979 would be even more unfair; companies that had conscientiously complied with the first-year standards would have relatively lower allowables than those that had not complied. Moreover, if the base period were moved forward enough to encompass the explosion in energy and other raw-material costs, it would be equally unrepresentative for a program period in which the raw-material price increases are expected to abate. Finally, changing the base period would impose additional costs on companies—which would have to recalculate their base-period price changes—and on the Council—which would have to process the revised data.

4. *Adjustments of the Base Period.* While the base period is suitable for the vast majority of companies, we recognize that in individual instances a company's base period may not adequately represent its normal cost/revenue relationships. We anticipated such problems by providing undue-hardship and gross-inequity exceptions designed in part to provide relief in the case of unrepresentative base periods. It has, however, taken us more time than expected to formulate criteria for such relief, because of the difficulty of defining criteria that would permit desirable adjustments without opening gaping loopholes.

Toward the end of the first program year, we began making adjustments for unusual and nonrecurring events during the base period—e.g., unusually high start-up costs, floods, fires, and strikes. More recently, we have provided relief for companies whose base-period profits were temporarily depressed because of readily identifiable, transitory, noncyclical developments.

Other criteria for adjusting base periods have been suggested to us but not accepted. For example, some companies have asked that they be allowed to raise their profit margins to an industry-wide average. This would have the effect of substantially increasing the average profit margin; because, of course, every company below the average would move up to it whereas no company above the average would be forced to come down to it. The result of such a universal acceptance of the propriety of catch-ups would be a slippage in the standards so serious as to threaten their effectiveness.

It has also been suggested that base-period adjustments be allowed for any company (or compliance unit) that incurred a loss during the base period. We acknowledge that a loss position cannot typically be representative of a viable long-term operation. Nevertheless, the Council has not automatically made adjustments in such cases, for several reasons. First, it is not necessarily an undue hardship for a compliance unit that is part of a larger company to be in a loss position; many companies may carry nominally losing operations for considerable periods of time for valid business reasons. Second—and more important—it is difficult, if not impossible, to develop workable and equitable criteria for an adjustment. Zero growth in profits might sound more reasonable than a negative number, but those who object to a negative number would surely object also to zero. Moreover, it is arbitrary to distinguish between companies slightly below and those slightly above zero. The only logical outcome of that process

would be something that also has been suggested—that the Council set "reasonable" rates of return for companies with negative—or low—base-period profits. It seems clear, however, that we will not allow ourselves to be drawn into rate-of-return regulation for large segments of the economy.

Although none of the base-period adjustments made by the Council to date have involved the price limitation, we have adjusted program-year price changes to achieve the same result, as in the above-cited cases of airline companies and companies using substantial amounts of gold and/or silver.

We believe that adjustments of base-period data will be increasingly important in the third program year, because the inequities caused by unrepresentative base periods cumulate the longer companies are constrained by their base-period performance. We therefore strongly urge public comments on possible ways of accomplishing this without gutting the standards.

5. *The Range of Allowable Price Increases.* During the first program year, a company's average price increase was not held below 1½ percent, and not permitted about 9½ percent, whatever its base-period rate of price change. In the second year, we narrowed that range to avoid inequitable treatment of firms with very low base-period rates of change without unduly relaxing the standard; specifically, we set the price band at 3½ percent to 8½ percent for the second year alone. Because the second-year standard was a cumulative two-year limitation, the range of allowable price increases for the two years was 5 percent to 19 percent.

To determine the range of allowable price increases for the third year, it is instructive to examine the relationship between alternative ranges and levels of the aggregate price standard. Clearly, raising (lowering) either of these bounds increases (decreases) the aggregate price standard. Table 9 shows the level of the aggregate price standard for various values of the upper and lower bounds, assuming that the allowable rate of increase is set equal to the base-period rate of increase (of course, subtracting a "deceleration" factor would lower each value in the table by the amount of the deceleration factor). The constructed values are based on a sample of 727 compliance units.

Changing the bounds within moderate ranges has little effect on the aggregate price standard. For example, the change in the bounds from 1½ percent and 9½ percent in the first year to 3½ and 8½ percent in the second year had no effect on the aggregate price standard; both pairs yield an aggregate price standard of 6.27 percent (assuming no change in the deceleration factor). Note also that this figure differs little from the aggregate price standard with no upper or lower bound (6.35 percent).

Table 9

Relationship Between Alternative Ranges of Allowable Price Increases and the Aggregate Price Standard 1/

Alternative Lower Bounds	Alternative Upper Bounds					
	No Upper Bound	9.5	9.0	8.5	8.0	7.5
No Lower Bound	6.4	6.1	6.1	5.9	5.8	5.5
1.5	6.5	6.3	6.2	6.1	5.9	5.7
2.0	6.5	6.3	6.2	6.1	5.9	5.7
2.5	6.5	6.3	6.3	6.1	5.9	5.7
3.0	6.6	6.4	6.3	6.2	6.0	5.8
3.5	6.7	6.5	6.4	6.3	6.1	5.9
4.0	6.8	6.6	6.6	6.4	6.2	6.0
4.5	7.0	6.8	6.7	6.6	6.4	6.2
5.0	7.2	7.0	6.9	6.8	6.6	6.4

1/ Based on a sample of 727 compliance units with total sales of $264 billion. The entries in the matrix are levels of the aggregate price standard, assuming no deceleration or acceleration from the base period.

Of course, the upper and lower bounds are not used to set the aggregate price standard; rather, they are intended to change the distribution of allowable increases for reasons of equity. The number of compliance units affected by changes in the range can be determined by reference to the cumulative distribution in Table 10. For example, raising the lower bound from 1.5 percent to 3.5 percent increased the proportion of units affected from 14 percent to 25 percent, but lowering the upper bound from 9.5 percent to 8.5 percent decreased the proportion of units affected from 86 percent to 77 percent.

Table 10—*Cumulative Distribution of Compliance Units by Base-Period Rate of Price Change* [1]

Base-period rate of price change	Percentage of compliance units
less than 0.0	8.6
0.0 to 0.5	10.1
0.5 to 1.0	12.1
1.0 to 1.5	14.3
1.5 to 2.0	17.5
2.0 to 2.5	19.7
2.5 to 3.0	22.2
3.0 to 3.5	25.3
3.5 to 4.0	27.3
4.0 to 4.5	30.3
4.5 to 5.0	35.7
5.0 to 5.5	41.2
5.5 to 6.0	45.8
6.0 to 6.5	52.6
6.5 to 7.0	58.5
7.0 to 7.5	64.0
7.5 to 8.0	70.2
8.0 to 8.5	77.1
8.5 to 9.0	81.6
9.0 to 9.5	86.0
9.5 to 10.0	86.6
10.0 to 10.5	87.9
10.5 to 11.0	88.8
11.0 to 11.5	89.3
11.5 to 12.0	89.3
12.0 to 12.5	90.0
12.5 to 13.0	90.8
13.0 to 13.5	91.4
13.5 to 14.0	92.1
14.0 to 14.5	92.4
14.5 to 15.0	92.6
15.0 to 15.5	92.8
15.5 to 16.0	92.9
16.0 to 16.5	93.5
16.5 and above	100.0

[1] Based on a sample of 727 compliance units with total sales of $264 billion.

6. *One-Year versus Cumulative Standard.* There are essentially two choices for the design of the third-year price standard: (1) A one-year limitation on price increases, measured from the fourth quarter of the second program year to the corresponding quarter of the third year; or (2) a cumulative three-year limitation, measured from the calendar or fiscal quarter immediately preceding the first program year (the base quarter) to the corresponding quarter in the third program year. A variation of the second

approach would be to have a three-year cumulative limitation but to use the fourth quarter of a company's second program year as its base quarter for calculating its third-year increases.

A one-year limitation, by making the third-year limitation independent of actual and allowable increases in the first two program years, would eliminate complexities caused by the need to link changes in prices, gross margins, or profits of compliance units that comply with different standards in different years. It also has the advantage of moving the base quarter closer to the program year. This would expand the coverage of the program because it would permit the inclusion of products introduced, and companies formed, during the first two years. In addition, because the base-quarter product mix is used to calculate program-year price increases, using a more recent base quarter should reduce problems created by changes in product mix since the third quarter of 1978. However, a one-year limitation would penalize companies that did not increase prices as much as their allowable during the first two years, and obviously benefit those who exhausted—or exceeded—their two-year allowables. This would, in turn, provide incentives for companies to use all of the allowable increases in subsequent periods—an inflationary outcome that the Council is determined to avoid.

A cumulative three-year limitation has the advantages of familiarity and continuity; most important, it does not penalize those who did not use all of their allowables. Also, as noted above, it is possible to have a three-year cumulative standard and designate the fourth quarter of the second program year as the base quarter for calculating the third-year price increases, thus permitting coverage of new products and companies and the use of more current product mixes. Incorporation of that property into a *cumulative* (as opposed to a one-year) standard would thus combine the principal advantages of one-year and three-year limitations.

7. *Changes in the Profit Limitation.* During the first two program years, a profit limitation was available to compliance units unable to comply with the price limitation or other price standards because of an inability to calculate price changes or gross margins or because of uncontrollable increases in the prices of purchased goods and services. It was essential to have an alternative limitation available because large numbers of compliance units were faced with mounting cost pressures during 1979 and 1980.

The profit limitation is intended to constrain increases in price approximately to the increases in costs (thus preserving income shares). The second-year limitation consists of two tests, both of which must be satisfied. The first, which is unchanged from the first year, is that the profit margin for the second program year should not exceed the sales-weighted average profit margin for the best two of the compliance unit's last three fiscal years completed before October 2, 1978. The second test, which was tightened for the second program year, is that the compliance unit's second-program-year dollar profits should not exceed its base-year profits by more than 13.5 percent plus any positive percentage growth in physical volume from the base year to the second program year. Base-year dollar profits can be either (1) actual base-year profits or (ii) base-year revenue times the average of the base-year profit margin and the best-two-out-of-three-year average profit margin. In the first year, compliance units were allowed to use the full best-two-out-of-three-year profit margin in calculating base-year dollar profits, rather than having to average it with the base-year profit margin. We estimate that the asymmetry inherent in both of these definitions of base-year profits—allowing companies an upward adjustment if their base-year margin is below the best two out of three (effectively allowing "catch-up"), but not requiring a downward adjustment if the base-year margin is above the best two out of three—resulted in potential slippage a little less than half a percentage point. Companies that qualified for the profit-margin limitation were allowed to increase prices, on average, by an additional 1.3 percentage points because of the optional adjustment of base year profits. Weighting this slippage by the revenue share of companies under the profit-margin limitation, we obtain the above estimate of potential overall slippage (for all companies). Of course, the actual slippage was less than the potential because market conditions did not allow all companies to capitalize fully on the catch-up allowance. The second-year revision cut this potential slippage in half.

a. *Extent of "catch-up".* The extent to which the dollar-profit test permits a partial "catch-up" continues to be a matter of concern. As noted above, it grants some compliance units more than a passthrough of costs plus the stipulated percentage growth in profit. It may, therefore, be desirable to modify the profit limitation further by eliminating the alternative calculation, by simply reducing the amount of allowable "catch-up" from 50 percent to some lesser number, or by making the adjustment mandatory (requiring downward as well as upward adjustments).

b. *Choice of the base period.* During the first two program years, a compliance unit could choose any two of the last three fiscal years before October 1978 as its base period for profit calculations. We recognize that this period necessarily includes at least part of 1975, a recession year, and could include part of 1978, during which an informal anti-inflation program was in effect. Nevertheless, the two-out-of-three option eliminates the adverse effect of any unusual profit margin that might have occurred during one year of this period.

As with the base period for price calculations, the base period for the profit limitation could be moved forward. This, however, would create the same inequities as would a shift in the base for the price limitation, and would not necessarily better reflect current cost trends. In individual cases where the base-period results are clearly unrepresentative of normal operations and produce serious inequities, we have made adjustments (see Section 4), and will continue to do so.

c. *Requiring volume adjustments.* As currently drafted, the profit limitation provides for an upward adjustment of program-year dollar profits if a compliance unit experiences an increase in physical volume. If volumes decline, however, a compliance unit need not make any downward adjustment. Whether or not the standard should be symmetric—that is, an adjustment for volume be made mandatory in both directions—may be significant in the third program year, because significant declines in sales volumes are likely to take place during the recession. The principal problem with a mandatory volume adjustment is that many companies cannot readily develop physical volume indexes; indeed, many

are under the profit limitation for precisely this reason.

d. *Treatment of interest expense.* The definition of profit under the profit limitation includes interest expense—that is, interest must be added to profits in calculating the profit margin. The principle underlying this requirement is neutrality with respect to alternative forms of capitalization. That is, we wanted to avoid favoring one form of financing over another, and excluding interest expense (i.e., treating it as a cost, which can be passed through) would favor debt, as opposed to equity, financing. This approach had profound implications for many companies complying with the profit limitation because of the surge in interest rates during 1979 and early 1980. Particularly affected were retailers, who typically incur large short-term debt to finance inventories and accounts receivable; companies with primarily long-term debt—principally for capital investment—are less affected by short-term fluctuations in interest rates.

Two alternatives to the Council's approach have been suggested: (1) Excluding all interest expense and (2) excluding short-term interest expense. As we have observed, the first of these would discriminate against equity financing (although many would contend that neutrality requires inclusion of rental expense as well as interest expense to avoid discriminating against companies that purchase—rather than rent—structures). The second alternative was adopted in the Nixon Administration's Economic Stabilization Program and seriously disrupted capital markets by creating incentives for short-term financing of even long-term capital projects.

Finally, the sharp downturn in interest rates, which is expected to continue throughout the recession, should make this issue less pressing in the third year. Nonetheless, we solicit public comment on this question.

e. *Adjustments for productivity.* In designing the standards, we have been cognizant of the danger that government interventions like this one can cause inefficiencies. We have been particularly concerned about possible inhibitions of incentives to engage in productivity-improving capital investment. This is a matter of special concern because productivity growth is an effective antidote to inflation, in that it provides a buffer between increases in labor compensation and increases in unit labor costs. Indeed, the recent collapse of productivity growth has been an important contributor to our current inflation problem.

Our concerns are manifested in the standards in various ways, the most important of which is the selection of the price limitation, rather than cost-passthrough, as the basic standard. As we have already observed, companies that meet the basic price test reap the fruits of higher productivity growth in the form of higher profits. On the other hand, cost-passthrough limitations—whether of the profit-margin or gross-margin variety—dilute companies' incentives to engage in costly projects that could improve productivity, for two reasons. First, in many instances, those standards permit passthroughs of the costs that the projects might save. Second, investment prospects may require wider profit or gross margins if the additional investment is to be profitable, or even feasible.

Unfortunately, universal reliance on a price limitation is not feasible because of the need for relief for companies experiencing uncontrollable cost increases. As a result of the world-wide explosion of raw-material costs in 1979 and 1980, many companies were forced to resort to the alternative profit limitation. In addition, gross-margin standards—which provide for passthrough of some, but not all, costs—were developed for certain industries with highly volatile material input costs.

Those who contend that the profit-margin and gross-margin standards have, in fact, inhibited capital investment have suggested that a special adjustment to allowable margins be made for improvements in productivity. In fact, the mix adjustments currently available under the gross-margin standard for petroleum refiners partially compensate for investments that result in changes in the mix of feedstock inputs or refined products. This procedure, and modifications of it, are considered in subsection 9c. Similar adjustments could be applied more generally.

If adjustments were made for every capital investment program or for every improvement in productivity, however, the restraining effect of these alternative limitations would be severely weakened. Moreover, such adjustments would discriminate against companies in industries where the opportunity for substitution of capital for other inputs and/or for productivity improvement is relatively limited. In some high-technology industries, rapid productivity growth is commonplace; in other industries the technology simply does not lend itself to appreciable improvement. Nevertheless, because of the paramount social importance of revitalizing productivity growth, we modified our procedures at the beginning of the second program year to provide that, when the Council grants a request for approval of an exception, it may modify the exception to make allowances for documented extraordinary improvements in productivity that are demonstrably attributable to unusual capital expenditure programs. We anticipated that such a provision would produce a variety of requests, on the basis of which we could formulate criteria that could contribute to productivity growth without producing unacceptable slippage in the program. It elicited only a handful of requests, however—all of them received only recently.

8. *Excluded Products.* Agricultural, fishing, forestry, and mineral products falling within specified groups in the *1972 Standard Industrial Classification Manual* were excluded from the program during its first and second years. The reason for providing an exclusion was, in the case of most of these products, that their prices are set in competitive markets, in which sellers have little control over prices and in which price ceilings might possibly give rise to damaging shortages. The reason for relying on the SIC manual is that its classification scheme is well-known, well-understood, and easily administered.

While we are confident that the broad policies underlying both the exclusion and our reliance on the SIC manual are sound, we invite comment on whether the provision should be redrawn to include products now excluded or to exclude products now included.

9. *Modified Price Standards.* We developed the modified price standards as alternatives for industries for which the price standard is unsuitable. This is the case where (1) price-change indexes are too difficult or burdensome to compute, (2) raw-material costs are highly volatile, or (3) market characteristics necessitate special treatment. Modified standards are available for a number of kinds of companies, including retailers and wholesalers, food manufacturers and processors, petroleum refiners, electric, gas, and water utilities, insurance companies, professional firms, and financial institutions. A discussion of suggested revisions of some of the modified standards follows (no issues have yet been identified for the insurance (705.48 and 705.49), financial-institution (705.50), professional-fee (705.46), and government (705.47) standards, but comments on these standards are, or course, welcome.

a. *Retailers and wholesalers.* The most controversial aspect of the

percentage-gross-margin standard is the provision that allows companies whose percentage gross margins grew during the base period to continue their expansion at the same rate during the program period, but restricts companies whose margins were not growing to the base-year percentage.

Allowing the percentage gross margin to increase has been criticized by some. The Council adopted this policy because equal deceleration in the rate of growth of *dollar* gross margin per unit of output and in the prices of goods purchased for resale implies no change in the rate of growth of the percentage gross margin. Had all companies under this standard been restricted to a constant percentage gross margins, the allowable margin during the first year would have been 25.59 percent, 0.49 percentage point below the actual allowable.

Some retailers and wholesalers, on the other hand, argue that compliance units with zero or negative margin trends should be allowed a minimum positive trend—e.g., an allowable increase of one percentage point. Such a positive floor for the percentage-gross-margin trend has been likened to the 5-percent floor for the allowable two-year price limitation. The analogy is not apt, however, because constancy of the *percentage* gross margin entails a positive growth in *dollar* gross margin per unit (and in prices charged) so long as the prices of goods purchased for resale are going up.

The Price Advisory Committee has suggested that the Council allow a company to choose between (1) continuing to project a positive margin trend or (2) having a dollar-for-dollar passthrough of the amount by which its program-year interest costs exceed its base-year interest costs. This suggestion was prompted by concern that the explosion in interest rates in late 1979 and early 1980 has a particularly profound effect on compliance units subject to the percentage-gross-margin standard. As noted above, the current decline in interest costs should make this less of a problem in the third program year. Nevertheless, the Council invites comment on the issue. Commentators should take note of the fact that the provision of alternatives necessarily introduces additional slippage into the standards, because companies inevitably select the one that allows them the greater price increases.

A separate question that has been raised is whether the Council should specify all of the items to be excluded in calculating gross margin. Currently, under the percentage-gross-margin standard, the retailer/wholesaler gross margin is defined as net sales less the cost of goods sold. Some firms apparently include within the cost of goods sold certain items, such as warehousing and transportation costs, that others do not. Although consistency is desirable, there are so many accounting variations among companies and among industries that the Council could not conceivably specify with the precision desired the elements of costs to be excluded in calculating gross margin. We, therefore, solicit suggestions for other alternatives.

b. *Food manufacturers and processors.* Some food processors and manufacturers have repeatedly asked to have the cost of other items besides the food used in their operations excluded in calculating their gross margin. The alternative gross-margin standard was provided to these companies, however, because of the volatility of farm prices; that is why only the cost of food products used in food manufacturing and processing is excluded in the calculation of gross margin. The processors argue that there are several other elements of uncontrollable costs that are sharply rising and should therefore be passed through; they point specifically to packaging, interest, and energy.

The Council has provided special gross-margin standards to some industries so as to avoid the full cost-passthrough provisions of the profit limitation. The more items that are excluded from the gross margin, the less incentive there is for companies to substitute inputs whose prices are going up more slowly for those whose prices are going up more rapidly—the more, that is, the gross-margin standard takes on more of the infirmities of a profit limitation. Moreover, the profit limitation is available to individual food processors (as well as other companies) that experience particularly large and uncontrollable cost increases.

To the extent that rapidly rising costs of items not excluded under the gross-margin standard are a major problem, an alternative to excluding these specific items from the gross margin would be to raise the allowable growth of the gross margin. This might provide the requested relief, while avoiding the cost-plus character of the other proposed remedy. The Price Advisory Committee has recommended that the Council seek from the industry documentation of the extent of the problem.

c. *Petroleum refiners.* We developed a gross-margin standard for petroleum refiners for the same reason as for food processors and manufacturers: their raw-material costs are large and highly volatile. Unlike the other standards, however, we reviewed and substantially modified this one after the beginning of the second program year. At that time, we required refiners to disaggregate refining and marketing operations from all other operations for purposes of compliance. In addition, we tightened the standard by (1) expressing the limitation in terms of the gross margin per barrel, which has the effect of lowering allowable dollar gross margins if volumes decline, (2) making the output-mix adjustment mandatory, which eliminates an option, and thereby cuts down slippage, (3) specifying more clearly that only the cost of goods sold may be deducted from revenues in computing the gross margin (that is, costs of crude oil and refined product placed in inventory must not be subtracted from revenues in this calculation), and (4) making the intermediate (quarterly) limitations more restrictive than the end-quarter (two-year) limitation. Finally, we stipulated that, effective January 1, 1980, the cost of process fuel used in refinery operations should be subtracted from revenue in calculating gross margins.

This review and modification resolved many of the questions that had arisen during the first program year and that were analyzed in the Council's report, *Petroleum Prices and the Price Standards*, released February 25, 1980. Nevertheless, several important issues remain, particularly with respect to the relationship between the petroleum-refiner standards and national energy objectives. In a report released on May 30, 1980, *The Council's Petroleum-Refiner Standards*, we concluded that the standards strike a reasonable balance between energy goals and restraining inflation, but pledged to continue to review outstanding issues and to develop policy options for the third program year. The two principal areas of concern are (1) investment and energy-conservation incentives and (2) the choice between a quarterly and an annual gross-margin standard.

(1) *Investment and Energy-Conservation Incentives.* It has been asserted that, by limiting gross margins (which include capital and other non-petroleum costs), the petroleum-refiner standard inhibits incentives to invest in expanded or upgraded refinery facilities (e.g., facilities that produce the same or a lighter mix of products with heavier or sourer crude oil), and that, more generally, it may discourage investments or processes that entail costs that have to be recovered in the gross margin. Of course, constraining price increases *always* runs the risk of inhibiting investment incentives, and *any* partial

cost-passthrough standard creates incentives to favor the use of inputs whose costs are passed through. There has been no documentation, however, that the gross-margin standard has significantly curtailed investment expenditures or unduly interfered with energy conservation efforts. This may be because of the availability of input- and output-mix adjustments of refiner margins, which at least partially compensate for changes in non-petroleum costs (including capital costs) associated with changes in the mix of inputs or outputs. Nonetheless, we recognize that possible interference with investment incentives and energy-conservation efforts would become more serious the longer the voluntary standards remain in place. Consequently, we are requesting public comment on the following possible revisions to the petroleum-refiner standard.

Alternative mix adjustment. With the mix adjustments required under the current gross-margin standard, the base-period margin is calculated using the program-quarter (current) proportions of input and output quantities. This procedure compensates refiners for mix-induced changes in non-petroleum costs (including capital costs)—that is to say, it gives them credit for shifts to less costly crude-oil inputs and to more valuable outputs—to the extent that the base-period price differentials reflect current cost differentials. It has been suggested, however, that this last condition is not being met, and, as a result, that the refiners' standard discourages investments that would enable refiners to adjust to a relative decline in lighter crude supplies and a relative increase in the demand for lighter products.

An alternative procedure that would correct for these deficiencies—to the extent they exist—would be to calculate the program-period gross margin using base-period quantities, rather than adjusting the base-period margin using current quantities. The program-period gross margin would thus be the difference between (1) revenues that would have been earned (at current product prices) on the mix of products sold during the base period and (2) the input costs that would have been incurred (at current input prices on the mix of inputs used during the base period. Any increases in actual revenues attributable to a change in the mix of sales toward higher-valued products would thus not appear in the constructed (mix-adjusted) revenues. Similarly, any decrease in costs attributable to a change in the mix of inputs toward lower-valued ones would not appear in the constructed (mix-adjusted) costs, and therefore the resultant savings would not show up in the constructed program-period gross margin. In other words, refiners would retain the benefits of investments, conservation efforts, or other measures that improve the productivity of refining operations—i.e., that produce higher-valued products from lower-costs inputs. (See Appendix B for a numerical example that compares these two procedures.)

To the extent that this alternative procedure encourages investment more than the current procedure does, the resultant increase in refinery productivity would tend to compensate for the reduced price restraint. To the extent that it merely provides windfall gains for investments that have already been made or that would take place in any event, there would be no offsetting advantage. One way to help ensure the former result would be for us to commit now to use such a procedure only in later program years (if any), when investments being considered now would be coming on line.

Mix adjustments with an updated base period. Any mix-adjustment procedure necessarily entails the use of the same quantities in computing the base- and program-period gross margins. The alternative mix adjustment described above holds quantities constant at their *base-period* levels, so as to eliminate inadequacies in the adjustment attributable to obsolescence of the relative base-period prices of different kinds of crudes and products. (When quantities are held constant at *current-period* levels, the mix adjustment uses *base-period* prices, because in this event it is the base-period gross margin that is a constructed rather than an actual one. Conversely, when quantities are held constant at *base-period* levels, the mix adjustment uses *current-period* prices, because the current-period gross margin is the one that is constructed—not actual.)

Under either the current or the alternative mix adjustment procedure, a related issue is whether the base period should be updated periodically. Under the alternative mix adjustment, this would have the effect of updating the quantities used in the mix adjustment. Under the current mix adjustment, this would have the effect of updating the prices used in the mix adjustment.

Under either method, whether updating the base would permit greater price increases depends on changes in relative prices and relative quantities. Individual refiners, of course, might be disadvantaged by the selection of a new base period, just as they may have been disadvantaged by the choice of the original base period. In either case, however, exceptions may be available for companies whose compliance is measured against an unrepresentative base.

Volume decreases. The alternative mix-adjustment procedure described above is designed to encourage improvements in productivity. A separate, but related, issue is whether allowable dollar gross margins should change as volume changes (which in many cases results in productivity changes). In the first program year, we permitted refiners to increase their dollar gross margin to reflect increases in volume. In the second program year, we extended this principle to volume declines, by expressing the limitation in terms of the gross margin per barrel.

Some refiners have argued that, since fixed costs (which constitute most of the gross margin) do not decrease with decreases in volume, the per-barrel calculation unduly restricts their profits. By the same token, of course, the standard rewards productivity increases that arise when volumes increase. Absent a compelling reason to the contrary—which we have not yet seen—we will probably conclude that the objectives of the anti-inflation program are best served by symmetric treatment of changes in volume.

(2) *Quarterly versus Annual Standard.* In the first program year, the refiners' gross-margin standard compared program quarters with a base quarter. In developing the second-year standard, we proposed instead that the "base-quarter gross margin" be the average quarterly gross margin in the base year. On the basis of public comments, we reverted to the base-quarter measure used during the first year.

It is now being suggested that the Council should move to an annual standard for the program year. Some refiners have argued that, with a quarterly standard, the timing of crude-oil and product acquisitions takes on undue importance because the acquisition costs in each quarter affect the allowable prices that can be charged only in that quarter. This may occur even if the acquisitions are placed in inventory, because under customary accounting practices transitory changes in crude-oil and product inventories can affect costs of goods sold. Accordingly, the refiners conclude, a quarterly standard may thwart inventory accumulation objectives or encourage perverse pricing patterns. A quarterly standard also raises problems when there are retroactive crude-oil price increases (like the ones we experienced

last winter) and when firms make annual, but not quarterly, inventory-valuation adjustments.

If we were to adopt an annual program-year gross-margin limitation, we would also consider making the base-period an annual, rather than a quarterly, measure. Conversion to an annual standard would also reduce the likelihood of unrepresentative base-period margins.

d. *Electric, gas and water utilities.* When the standards program was first announced, there was much thought given to excluding rate-regulated public utilities because utility prices are already regulated by various state and local public utility commissions (PUCs) as well as by several Federal agencies. On the other hand, prices charged by some utilities (e.g., power and gas) had recently increased substantially and it was thought that exclusion of such a prominent part of the economy would be undesirable in view of the economy-wide nature and urgency of the inflation problem. Our solution was to recognize the primary role of the State and local PUCs by asking them to administer our standards, while also delegating to them the responsiblility for granting exceptions. This division of labor was intended to minimize the administrative costs of the standards program for utility companies and, at the same time, to ensure that the objectives of the President's anti-inflation program would be considered by the PUCs in their deliberations.

During the past year, there has been renewed interest in excepting utilities from the standards program. It has been argued that the standards are at best duplicative and at worst inconsistent with the approaches and/or criteria used by PUCs in evaluating rate-increase requests. Public comment on this threshold question would be very useful.

Assuming that a standard for utility companies will be a part of the third-year program, we should consider whether it should be modified to make it more compatible with the regulatory practices of the PUCs. A relatively minor change would be to allow utilities the option of using either the Council's base and program years or the test year used by the PUCs. Those who choose the latter would not have the additional computation costs required to demonstrate compliance with the Council's standard. On the other hand, the transition to a different program period would itself raise administrative and computational problems. In addition, allowing companies a choice between alternatives introduces additional slippage in the standards.

A more substantial endeavor would be to recast the standard to coincide more closely with the standards typically used by PUCs. This was the spirit of the Council's recent revision of the gross-margin standard for electric and gas utilities, permitting them either to include in the base-year margin the allowance for funds used during construction of plant not yet in service, or to exclude from the program-year margin a part of the additional revenue requirements attributable to the entry of new plant in service or construction work in process into the rate base.

The ultimate revision would be for the Council simply to defer to the PUCs, not merely in the administration of its standards, as it present, but also in the standards to be applied. The purpose of this change, as of those already made, would not be to weaken price restraint on utility companies, but only to recognize that PUC's already have the legal responsiblity to restrain rate increases in the public interest, and that the superimposition of the Council's standards could be either redundant or a kind of double regulation to which no other industries are subject.

The fact remains, however, that, to the extent that the Council's standards have an additional constraining influence, removing them would constitute a relaxation of the standards. We invite comments on these possibilities.

10. *Company Organization.* At the beginning of the first program year, firms were given considerable latitude (subject to certain accounting restrictions) in organizing themselves for compliance purposes; some chose to report to the Council as one integrated unit, and others disaggregated themselves into separate compliance units. We afforded such latitude largely to hold down companies' compliance costs and to accommodate firms with operations in several different sectors of the economy that are subject to vastly different economic forces.

At the beginning of the second program year, we allowed companies to reorganize themselves for compliance purposes, thus allowing them to respond to internal changes, altered economic circumstances, and simple mistakes in choosing compliance structures. We recognized that this would permit firms to group different portions of their operations in ways that allowed access to various exceptions. While this freedom created some slippage in the price standards, we believed the amount involved would probably not be significant, particularly since we did not generally permit reorganization during the program year.

We must now confront the question of whether firms should again be permitted complete latitude (subject to certain accounting criteria) to reorganize for the third program year. The pros and cons have not changed from last year. Accordingly, at this time we are leaning toward permitting such reorganization between program years, but not allowing reorganization within the year.

Assuming that company reorganization is permitted between the second and third program years, we are considering (at the suggestion of some) whether to *require* some disaggregation for compliance purposes in the third year. The ability of highly diverse firms to report as a single unit has made it difficult for the Council to obtain industry-specific data from major producers in industries exhibiting high inflation rates and to monitor effectively and equitably different companies operating in the same industry. Equally important, the flexibility in company organization has created inequities among companies in their access to modified price standards and in their ability to comply with the price standards. An example of the first situation is that a company with 50 percent or more of its revenues derived from food manufacturing or processing may report all of its operations under the food-processing gross-margin standard, while a company with 49 percent of its revenues derived from these activities would have to disaggregate in order to place its food-processing operations under that standard. An example of the second (and more serious) type of inequity arises from the fact that a comglomerate reporting on a consolidated basis might be able to offset high price increases in one area of its operations with low price increases in another; as a result it might be able to comply more easily than a company that operates only in the industry with large price increases.

Nonetheless, specifying ways for companies to disaggregate for compliance purposes has several problems. Obviously, it reduces their discretion to adopt the organizational structure they consider most suitable. It might disrupt their established frameworks for managing their business activities, or impose additional reporting burdens. It also would be difficult to specify the types of acceptable or unacceptable disaggregations. Most important, it would reduce the flexibility to adjust relative prices in response to changing market conditions—a feature of the price standard that promotes economic efficiency.

On approach would be to require disaggregation (as long as the accounting criteria are met) to the level of the major economic sectors as defined in the Standard Industrial Classification Code (e.g., agricultural production; mining; construction; manufacturing; transportation, communication, and utilities; wholesale/retail trade; finance, insurance, and real estate; and services). Another possibility would be to require a company applying a modified price standard to disaggregate the affected segment of its operations as a separate compliance unit. Finally, we could approach this problem on a case-by-case basis by placing suitable organizational-structure restrictions on grants of exception.

The flexibility accorded to companies in organizing for compliance purposes also can be used to shield the parent company from the adverse publicity of a noncompliance action against one of its compliance units. To increase the incentives for compliance, the Council is considering listing the parent as well as the particular compliance unit.

The Council solicits public comment on all of these issues of company organization.

11. *Self-Administration of Uncontrollable-Cost Exceptions.* The great majority of exception requests during the first two years have been based on uncontrollable cost increases. This is an area where the Council has over time refined the criteria both for eligibility and for the documentation needed to demonstrate it. In fact, by the time we promulgated the second-year price standards, these criteria were so well developed that they could have been incorporated directly into the standards. If that had been done, it would have had the effect of authorizing companies that satisfied the eligibility criteria to self-administer the exception, just as companies eligible for some of the modified standards for selected industries are able to choose them.

Not only has the Council had two years of experience with administering this exception, but the companies as well have undoubtedly developed a good understanding of the Council's approach to these cases. This is evidenced by the fact that most requests for this exception are now routinely approved, although there are still a signficant number of cases where insufficient data are provided.

Because of these developments and because we maintain an interest in reducing compliance burdens, we are considering allowing companies to self-administer uncontrollable-cost exceptions during the third program year. One disadvantage would be the greater likelihood that companies would self-administer exceptions to which they were not entitled, although this danger could be minimized by requiring companies to notify the Council when they self-administer the exception and to submit supporting documentation. An intermediate approach would be to permit self-administration of uncontrollable-cost exceptions only by companies that had already received Council approval during the second program year, on the ground that they are likely to be eligible, and presumably are relatively familiar with the technical questions involved.

12. *Price Prenotification.* We assess compliance with the standards after price increases have been put into effect. Price increases that exceed the standards come to our attention mainly when companies file their quarterly compliance reports. We might, however, improve the program's effectiveness if we assessed compliance before price increases took place, because companies typically are more willing to modify prospective increases than to take after-the-fact corrective action—which may involve price rollbacks. In addition, if we asked companies to notify us before they increased prices, it would facilitate rapid resolution of possible misunderstandings or misinterpretations of the standards and encourage companies to maintain a closer and more current check on their compliance posture.

Such considerations provided the rationale for the price prenotification program that the President announced on March 14. Because it is so late in the second program year, the Council will not initiate a prenotification program this year, and is using this *Issue Paper* to solicit comments on whether there should be a program for the third year and, if so, what it should look like.

The program that the Council is considering would be selective and voluntary, seeking prenotification only where the benefits in improved price restraint clearly outweigh the heavier reporting burdens. Prenotification would not be used to delay or to suspend proposed price increases, as it was in the Nixon Administration's Economic Stabilization Program; the Council does not have statutory suspend-and-delay authority and will not seek it. To the extent that the Council's intentions are misunderstood, a prenotification plan may lead to anticipating price increases that will diminish any benefits of the effort.

The number of companies asked to prenotify would be kept small to limit the reporting burden and to assure timely Council responses. Possible criteria for selection are (1) problem sectors, (2) basic or key industries, (3) company size, (4) price leadership, (5) degree of industry concentration, (6) historical industry pricing practices, and (7) homogeneity of product lines.

To help develop a prenotification program, the Council has consulted a number of outside groups; these have raised a number of problems with which we are still grappling. First, because businesses often do not know the exact size of a price increase until shortly—days or even hours—before the increase is implemented; therefore, it could be hard to prenotify with sufficient lead time. Second, because of differences in company pricing policies, different lead times would be appropriate for different companies; even pricing within a company can vary from region to region and product to product. Third, because data for prenotification are not kept in the ordinary course of business, projecting compliance would involve additional administrative cost. Because of the difficulties involved in developing a workable prenotification program, the Council strongly urges comments on this issue.

Appendix A. Detailed Analysis of Company-Specific Pay Data

This appendix provides more detailed breakdowns of the company-specific pay data issued in Section II–B.

In Table A–I, we provide the base-period and program-period data that were used in calculating the unadjusted and adjusted pay-rate increases shown in Table 4. The pay-rate increases shown at the bottom of the table can be calculated by dividing the appropriate program-period level by its corresponding base-period amount in the upper half of the table.

The nature of the adjustments and exceptions for the program period that were used in calculating the overall statistics in Table A–I are shown in more detail in Table A–II. For each category, we present the percentage of workers who received the adjustments and, for those workers, the increase in the dollar adjustment over the comparable adjustment for the base period and, the percent of the workers' base year pay that these net adjustments represent. In addition, we show the magnitude and percentage amount that these adjustments represent on average for all workers, including those who received no adjustments (i.e., the weighted hourly adjustment).

Although the implications of the patterns were discussed earlier in the report, some additional explanation of the adjustment categories is helpful in interpreting the results.

Table A-I.—*PAY-1 Data Components of Hourly Pay*[1]

[In dollars]

	All workers[2]	Collective bargaining units[2]	Management units	Other units
Pay component:				
Number of base-period reporting workers	7,430,162	1,399,054	2,415,395	3,615,713
Percent of base-period reporting workers	100.0	18.8	32.5	48.7
Base Period (BP):				
BP unadjusted hourly pay rate	$11.34	$12.16	$14.44	$8.96
BP unadjusted wages and salaries	8.70	8.49	11.23	7.09
BP unadjusted hourly cost of incentive pay	0.42	0.13	0.77	0.29
BP unadjusted hourly cost of benefits	2.23	3.54	2.44	1.58
BP total adjustments	0.11	0.01	0.16	0.11
BP adjusted hourly pay rate	11.23	12.15	14.28	8.85

	First year	Annualized	First year	Annualized		
Program Period (PP):						
PP unadjusted hourly pay rate	12.20	12.15	13.51	13.24	15.40	9.55
PP unadjusted hourly wages and salaries	9.37	9.34	9.40	9.24	12.02	7.59
PP unadjusted hourly cost of incentive pay	0.41	0.41	0.14	0.13	0.77	0.28
PP unadjusted hourly cost of benefits	2.41	2.39	3.96	3.87	2.62	1.67
PP total adjustments	0.26	0.24	0.38	0.26	0.29	0.19
PP adjusted hourly pay rate	11.94	11.91	13.13	12.98	15.11	9.36
Unadjusted pay-rate increase (percent)	7.6	7.1	11.0	8.9	6.6	6.6
Adjusted pay-rate increase (percent)	6.3	6.1	7.9	6.8	5.8	5.8
Unadjusted minus adjusted increase (percent)	1.3	1.0	3.1	2.1	0.8	0.8

[1]The percentage increases are obtained by averaging across employee units, using base period employment as weights. Components may not add to total because of rounding.

[2]Pay increases for collective bargaining units are calculated in two ways: The first-year calculations represent the costs of the first year of collective-bargaining agreements, negotiated during the program period, while the annual-average data pertain to the (geometric) average annual rate of increase over the life of the contract. Because of front loading, first-year estimates for multi-year contracts are usually larger than the annual averages.

Table A-II.—*Program Period—PAY-1 Data Adjustments*[1]

Adjustment category	All workers	Collective bargaining units[2]	Management units	Other units
Total program-year adjustment:				
Percent of reporting workers affected	53.2	85.8	47.7	44.2
Hourly adjustment per affected employee:				
Dollars	0.23	0.31	0.27	0.18
Percent	2.0	2.5	1.9	1.9
Weighted hourly adjustment:				
Dollars	0.13	0.26	0.13	0.08
Percent	1.1	2.2	0.9	0.9
Incentive pay/sales commission overages attributable to higher volume:				
Percent of reporting workers affected	6.8	0.5	10.0	6.6
Hourly adjustment per affected employee:				
Dollars	0.05	0.01	0.06	0.06
Percent	0.7	1.3	0.4	0.7
Weighted hourly adjustment:				
Dollars	0.00	0.00	0.01	0.00
Percent	0.0	0.0	0.0	0.1
OOIA payment overages:				
Percent of reporting workers affected	22.8	74.8	6.3	13.6
Hourly adjustment per affected employee:				
Dollars	0.23	0.25	0.25	0.20
Percent	1.9	2.0	2.1	1.7
Weighted hourly adjustment:				
Dollars	0.05	0.18	0.02	0.03
Percent	0.5	1.5	0.1	0.3
Maintenance of health benefits overages:				
Percent of reporting workers affected	35.8	74.9	29.3	25.1
Hourly adjustment per affected employee:				
Dollars	0.04	0.04	0.04	0.03
Percent	0.4	0.3	0.3	0.4
Weighted hourly adjustment:				
Dollars	0.01	0.02	0.01	0.01
Percent	0.1	0.2	0.1	0.1

Table A-II.—*Program Period—PAY-1 Data Adjustments*[1]—Continued

Adjustment category	All workers	Collective bargaining units[2]	Management units	Other units
Overages due to nonchargeable changes in defined-benefit pension funding costs:				
Percent of reporting workers affected	17.3	63.5	8.8	5.0
Hourly adjustment per affected employee:				
Dollars	0.07	0.02	0.13	0.05
Percent	0.6	0.1	0.8	0.6
Weighted hourly adjustment:				
Dollars	0.01	0.01	0.01	0.00
Percent	0.1	0.1	0.1	0.0
Exclusion of unaltered pension plan:				
Percent of reporting workers affected	6.3	2.5	16.3	16.2
Hourly adjustment per affected employee:				
Dollars	0.10	0.26	0.09	0.05
Percent	1.2	3.7	0.7	0.6
Weighted hourly adjustment:				
Dollars	0.01	0.01	0.01	0.01
Percent	0.1	0.1	0.1	0.1
Exclusion of qualified profit-sharing retirement plans:				
Percent of reporting workers affected	6.5	0.1	6.6	8.9
Hourly adjustment per affected employee:				
Dollars	0.15	0.65	0.04	0.04
Percent	1.4	5.4	0.3	0.5
Weighted hourly adjustment:				
Dollars	0.00	0.00	0.00	0.00
Percent	0.0	0.0	0.0	0.0
Overages from formal annual pay plans:				
Percent of reporting workers affected	16.9	NA	20.7	14.3
Hourly adjustment per affected employee:				
Dollars	0.09	NA	0.10	0.08
Percent	0.6	NA	0.7	1.0
Weighted hourly adjustment:				
Dollars	0.01	NA	0.02	0.01
Percent	0.1	NA	0.2	0.1
Effect of fixed-pop. method; promotions:				
Percent of reporting workers affected	7.3	NA	11.7	4.3
Hourly adjustment per affected employee:				
Dollars	0.11	NA	0.17	0.07
Percent	1.2	NA	1.4	1.0
Weighted hourly adjustment:				
Dollars	0.01	NA	0.02	0.00
Percent	0.0	NA	0.1	0.0
Effect of fixed-pop. method; qualification increases:				
Percent of reporting workers affected	3.4	NA	4.2	2.9
Hourly adjustment per affected employee:				
Dollars	0.13	NA	0.12	0.13
Percent	1.3	NA	0.9	1.6
Weighted hourly adjustment:				
Dollars	0.00	NA	0.00	0.00
Percent	0.0	NA	0.0	0.0
Effect of weighted average method:				
Percent of reporting workers affected	2.2	NA	1.5	2.0
Hourly adjustment per affected employee:				
Dollars	0.14	NA	0.22	0.08
Percent	1.3	NA	1.7	1.0
Weighted hourly adjustment:				
Dollars	0.00	NA	0.00	0.00
Percent	0.0	NA	0.0	0.0
Overages from pay exceptions: OWPS approved				
Percent of reporting workers affected	5.7	13.9	4.4	3.3
Hourly adjustment per affected employee:				
Dollars	0.15	0.20	0.15	0.14
Percent	1.5	2.1	1.2	1.4
Weighted hourly adjustment:				
Dollars	0.01	0.03	0.01	0.00
Percent	0.1	0.2	0.1	0.1
Overages from pay exceptions, self administered:				
Percent of reporting workers affected	2.5	2.1	2.4	2.8
Hourly adjustment per affected employee:				
Dollars	0.13	0.31	0.12	0.06
Percent	1.0	1.6	0.9	0.8
Weighted hourly adjustment:				
Dollars	0.00	0.01	0.00	0.00
Percent	0.0	0.1	0.0	0.0

[1]The percentage increases are obtained by averaging across employee units, using base period employment as weights.
[2]Annualized over the life of contract.

Adjustments for incentive pay overages attributable to higher volume are provided in instances where physical volume increases can reasonably be attributed to increased work effort or improved worker performance. COLA payment overages reflect the costs attributable to the difference between the company's inflation assumption for costing out cost-of-living escalators and the stipulated assumption of a 6-percent inflation rate. The maintenance-of-health-benefits exclusion represents the costs above 7 percent involved in maintaining the present levels of health insurance coverage, which the Council excludes from consideration.

There are three retirement-plan adjustments. The first pertains to changes in defined pension funding costs—that is, changes in costs attributable to altered actuarial assumptions or poor performance of the fund's investments. The exclusion for unaltered pension plans pertains to pension plans that link benefits to the level of wages and salaries. In cases where the plans are not amended and the benefit structure remains unchanged, companies could exclude all pension costs from the base period and program-period pay rates. Finally, costs associated with profit-sharing retirement plans may be excluded from the pay calculations when the formulas are not changed.

The adjustments for formal annual pay plans exclude from the chargeable increases all pay increases above 7 percent that are made under pre-existing formal pay plans. Only previously communicated increases are included in this exclusion.

There are two types of adjustments pertaining to the method of computation used to detemine compliance. If the fixed-population method is used, pay increases resulting from promotions or qualification increases are excluded. If the unit-average method is used and the mix of workers changes from the base period, the pay increase calculations can be done using the base-period weights, with the difference in the results being excluded from the chargeable increases.

The final two adjustment categories are for exceptions granted by the

Council or self-administered by the company. The categories for both kinds of exceptions are identical: acute labor shortages, tandem relationships, gross inequity, or undue hardship, and productivity-improving work-rule changes.

The key pages of the Council's PAY–1 form in which the data in Tables A–I and A–II are based are reproduced as Table A–III. The blanks in the form have been completed using the average amounts for all of the reporting companies.

Finally, we have included in Attachment A–I a summary of the pay standards from the Council's *Compendium.* This discussion summarizes the factors guiding the design of the pay standard. Part 6 of this excerpt material provides a detailed description of the criteria for exceptions and exemptions from the pay standard.

BILLING CODE 3175–01–M

Table A-III

Part III - Pay Rate Data 1/

	(A) Base Period Pay Rate	(B) Program Period Pay Rate	
1. Straight-Time Wage and Salary:	$ 8.70	$ 9.34	1
(Projected COLA at ___% CPI: $ _._ _ _)			
2. Incentive Pay (where applicable):			
a. Sales commission and production incentive pay:	_._ _ _	_._ _ _	2a
b. Bonuses and other annual incentive pay:	_._ _ _	_._ _ _	2b
c. Long term incentive pay:	_._ _ _	_._ _ _	2c
d. Total hourly cost of incentive pay:	0.42	0.41	2d
3. Benefits:			
a. Pay for time not worked	_._ _ _	_._ _ _	3a
b. Savings and thrift plans:	_._ _ _	_._ _ _	3b
c. Qualified defined-benefit retirement plans:	_._ _ _	_._ _ _	3c
d. Health benefit plans:	_._ _ _	_._ _ _	3d
e. Other insurance plans:	_._ _ _	_._ _ _	3e
f. Other (total): _____ _____	_._ _ _	_._ _ _	3f
g. Total hourly cost of fringe benefits:	2.23	2.39	3g
4. Hourly Pay Rate (Sum of 1+2d+3g):	$ 11.34	$ 12.15	4
5. Annual Percent Pay-Rate Increase:	7.1 %		5

IF THE ANNUAL PERCENT PAY-RATE INCREASE IS 7 PERCENT OR LESS (AND FOR MULTI-YEAR AGREEMENTS, NO INDIVIDUAL YEARLY INCREASE IS ABOVE 8 PERCENT) AND DEFINED-BENEFIT PENSION FUNDING COSTS ARE UNCHANGED, THE EMPLOYEE UNIT IS IN COMPLIANCE AND ITEMS 6-8 NEED NOT BE COMPLETED.

1/ Components may not add to total because of rounding.

	(A) Base Period Pay Rate	(B) Program Period Pay Rate	
6. Adjustments to pay rate (where applicable)			
a. Alternate base adjustment for bonus plans:	-$ 0.0 0		6a
b. Sales commission/production incentive pay due to higher volume:		$ 0.0 1	6b
c. COLA payments beyond 6 percent increase in CPI (attach copy of formula):		0.0 5	6c
d. Maintenance of health benefits cost increase above 7 percent:		0.0 1	6d
e. (1) Non-chargeable changes in defined-benefit pension funding costs:		0.0 1	6e(1)
(2) Exclusion of unaltered pension plan:	0.0 9	0.1 0	6e(2)
f. Exclusion of qualified profit-sharing retirement plan:	0.0 2	0.0 2	6f
g. Overage from formal annual pay plans:		0.0 1	6g
h. Overage from pay exceptions			
(1) Approved by CWPS (TA__ LS__ WR__ WH__):		0.0 1	6h(1)
(2) Self-Administered(TA__ LS__ WR__ WH__):		0.0 0	6h(2)
i. Effect on average wage if fixed population method used, 705B-4(b)			
(1) Promotions (in base period $_ _._ _ _):		0.0 1	6i(1)
(2) Qualification increases (in base period $_ _._ _ _):		0.0 0	6i(2)
j. Effect on pay rate if weighted average method used, 705B-4(e):		0.0 0	6j
k. Total adjustments:	$ -0.1 1	$ 0.2 4	6k
7. Adjusted Hourly Pay Rate (Difference 4-6k):	$11.2 3	$11.9 1	7
8. Adjusted Annual Percent Pay-Rate Increase:	6.1 %		

BILLING CODE 3175-01-C

Attachment A–I

Excerpts From Pay and Price Standards: A Compendium

Part I: Design of the Pay/Price Standards

The pay and price standards have been crafted carefully to strike a balance among four principal criteria: effectiveness, simplicity, equity, and economic efficiency.

To be effective, the goals of the standards were targeted to be ambitious enough for widespread compliance to reduce inflation significantly without being so ambitious that compliance becomes impractical. Also for effectiveness, the standards were designed to apply to a wide range of diverse economic activities.

Against the need for widespread coverage, every effort has been made to retain simplicity. And, in fact, the basic standards remain simple for most businesses to apply. However, some increased complexity has come about in response to requests from large businesses for more specificity and due to the need to provide modifications that account for the institutional characteristics and operational realities of certain industries.

For purposes of equity, the standards request moderate restraint from the widest possible range of individuals and organizations; no one group is asked to shoulder a disproportionate share of the burden. But, as in any effort to break into a pay/price spiral, some are bound to be affected sooner or to a somewhat greater degree than others. In recognition of this fact, the standards include several explicit provisions aimed at avoiding the imposition of major inequities.

As with most government intervention in the marketplace, the call for restraint in pay and price decisions runs the risk of inducing some economic inefficiencies by distorting market incentives and signals, resulting in a misallocation of resources. This concern is reflected throughout the standards, evidenced by the general focus on *average* prices and pay rates rather than on those of *individual* products and workers, thus allowing relative prices and pay rates to respond to market conditions.

In designing and revising the standards, adherence to these criteria forced numerous difficult decisions required to balance conflicting objectives. In particular, most efforts to add sensible exception provisions and to provide the degree of flexibility needed to minimize potential inequities and market distortions directly reduced the potential effectiveness of the standards. Conversely, most efforts to increase potential effectiveness increased the risk that compliance would cause inequities and inefficiencies.

Since the standards are sufficiently ambitious to be effective with widespread compliance, it is undoubtedly the case that some inequities and inefficiencies will result. But, these are likely to be small compared to the capricious inequities and the fundamental economic inefficiencies caused by inflation itself.

The pay and price standards were designed to be consistent with each other, assuming a continuation of the well-established historical relationship between prices and unit labor costs.

The price deceleration standard provides each firm with its own numerical limitation on price increases during the program year. For each firm, this limitation is derived by deducting one-half of a percentage point from the average annual rate of price increase over the 1976–77 period. If every company in the U.S. economy were to adhere precisely to this standard, the program-year inflation rate would be about 5¾ percent. This figure is obtained by deducting one-half of a percentage point from the 6¼ percent annual rate of increase in the Consumer Price Index, excluding food, during the 1976–77 period.

However, not all firms will be able to achieve price deceleration, due to raw-material price increases, previously negotiated labor contracts, and other factors. To comply with the price standard, these firms will resort to the profit-margin exception, which allows unit-cost increases to be passed through on a percentage basis up to 6½ percent and on a dollar-for-dollar basis thereafter. Given full compliance with the price standard, including this exception, inflation would be about 6½ percent in absence of raw-material shortages or external supply shocks.

The standards were designed to make this price objective consistent with full compliance with the pay standard, constant functional income shares (i.e., constant profit margins and a constant labor share of total national income), and the estimated long-term productivity trend.

The pay standard requests that average increases in wage rates and private fringe-benefit costs per hour not exceed 7 percent over the program year. However, with full compliance, actual private hourly compensation costs will rise by about 7¾ percent. The slippage between the 7-percent pay standard and the 7¾ percent objective is attributable to several provisions and exceptions included to accommodate legitimate concerns about equity and economic efficiency. When mandated Social-Security cost increases above 7¾ percent are included, total compensation per hour will increase by about 8¼ percent. Deducting from this figure the 10-year productivity growth trend of 1¾ percent, unit labor costs will increase by about 6½ percent.

Historically, changes in unit labor costs and changes in prices have been very closely related, reflecting the virtual constancy of functional income shares. The numerical standards were designed purposely to reflect this relationship. Hence, as seen above, the 6½ percent increase in unit labor costs, assuming full compliance with the pay standard, is consistent with the 6½ percent price objective, assuming full compliance with the price standard.

This is not a forecast of inflation rates over the program year. Even with full compliance, if productivity growth rates are below historical averages or if there are major perverse supply shocks, price increases will exceed the above objective.

The pay and price objective for the second program year will, of course, depend on the degree of success during the first year. Therefore the second-year standards will not be formulated until the third quarter of 1979.

A. The Pay Standard

Compliance with the pay standard requires that pay rates increase by 7 percent or less for each of several identified employee groups. The 7-percent standard is not intended as a target for pay-rate increases; it is an upper limit, or cap. Where market forces suggest that smaller increases are warranted, smaller increases should be granted.

The standard imposes a common numerical limit across industries and regions. Although an assumption about *aggregate* productivity growth provides the link between the pay standard and price standard, the pay standard does not vary across industries or firms depending on industry-specific or firm-specific productivity changes. The absence of such productivity adjustment reflects both the effectiveness and equity criteria discussed above.

First, productivity is extremely difficult to measure and the existence of a general adjustment would create a significant loophole, preventing the effective limitation of pay-rate increases.

More importantly, from an equity standpoint, the disparities between productivity growth rates across industries are not attributable to differences in the diligence of the workers involved; instead they are due to the fact that there is more potential for productivity-improving innovations in some industries (for example, manufacturing) than in others (for example, services). Further, there is no logical justification or historical support for the notion that high-productivity-growth industries are high-wage-growth industries. Instead, disparities in productivity growth rates across industries tend to be reflected in divergent price trends; price increases tend to be relatively low in high-productivity-growth sectors and relatively high in low-productivity-growth sectors.

Although the notion of a pay standard tied to company-specific productivity growth has been rejected in the interest of promoting efficiency, incentive pay plans that relate individual pay rates to individual performance receive special treatment.

Incorporation of the above criteria (effectiveness, simplicity, equity, and efficiency) dictate several other general characteristics of the pay standard:

- For reasons of equity and effectiveness, *all* forms of pay are included.
- The standard applies to the sum of different types of pay rather than to each component separately, imposing no restrictions on the mix of pay increases.
- The standard applies the average pay rates for employee groups rather than for individual employees, imposing no restrictions on the distribution of pay-rate increases across individuals.
- The standard applies directly to those components of pay that firms control, and makes certain allowances for pay increases not controlled directly by the company.

1. Components of Pay

Pay rates are defined to exclude overtime pay unless the terms of the overtime pay are changed (say by changing the formula from time and a half to double time, in which case the impact on hourly cost should be estimated and counted as a pay increase).

Private fringe-benefit payments—but not employer contributions to legally-mandated benefit programs such as Social Security, unemployment insurance, and workers compensation—are counted as pay. These private fringe benefits include (but are not confined to) pensions, health insurance, and all forms of paid leave.

The inclusion of fringe-benefit costs is important since these have become an increasingly significant component of labor costs in recent years, and their inclusion is necessary to avoid an obvious loophole: the substitution of fringe benefits for cash wages. However, the standard allows complete flexibility between wage increases and benefit improvements. For example, if the base pay rate for an employee group averages $8.00 per hour in wages with an additional $2.00 per hour in benefits, the total wage and benefit base is $10.00 per hour. Under the standard, the average increase cannot exceed 7 percent annually, or 70 cents per hour. This allowable 70-cent increment can be distributed in any manner between wage increases and benefit improvements.

There are three important qualifications to the provision that all increases in costs of benefits are counted against the standard. First, government-mandated increases—including increases in items mentioned earlier—are excluded from the calculation of pay increases, since these cost increases are beyond the control of the employer.

Second, only the first 7 percent of the increased cost of *maintaining* existing health-plan benefits is counted. It could be argued that the entire increased cost of maintenance of benefits (MOB) should be counted against the standard because (1) these increased costs add to labor costs and exert upward pressure on prices, and (2) not counting the increased cost of MOB discriminates against workers whose employers do not provide elaborate fringe-benefit plans and must therefore pay their own increased medical-care costs out of their increases in wages (which do count against the standard). On the other hand, the equity issue results in a standoff because, without the special provision for this category of fringe benefits, employees with identical benefit packages could be subject to different limitations on wages and salaries due to differences in benefit plan experience or in the timing of premium adjustments. In addition, employers object to including all increases in MOB costs because they have little or no control over them. It was this latter point that led the Council to revise the treatment of maintenance of medical-care costs in the final standards.

Third, for the same reasons, increased costs of maintaining a pension fund, with no improvement in benefits, are not counted against the pay standard. Such cost changes can come about because of changes in funding methods, changes in amortization periods, changes in actuarial assumptions, or plan experiences.

The full amount of all cost increases due to *improvements* in health or pension benefits is counted in determining pay-rate changes.

2. Employee Groups

The 7-percent limitation on annual pay-rate increases does not apply to individual employees. Instead, the standard applies to the *average* pay-rate increases for units of employees. Within each unit, some employees may receive increases above 7 percent so long as these excesses are offset by smaller increases for other employees in the same unit. This flexibility allows employers to adjust individual pay rates on the basis of individual merit and market conditions for different types of labor services, so long as the overall 7-percent limitation is satisfied. This feature of the pay standard promotes economic efficiency and facilitates equitable pay policies.

The separate employee units to be identified under the standard are (1) each collective bargaining unit, (2) all management personnel, and (3) nonmanagement employees not covered by collective bargaining agreements. A collective bargaining unit representing less than 5 percent of all employees in a firm need not be considered separately, but can be combined with the appropriate nonunion group. Any reasonable divisions of the nonunion employees into management and nonmanagement units is acceptable.

Collective bargaining units are required to be identified separately because these employee groups are subject to binding contracts and the contract terms can be altered only at the time of negotiation. The standards therefore apply to the terms of newly negotiated contracts. For nonunion employees, the distinction between management and nonmanagement groups is provided to ensure that management decisions about pay-rate increases provide equitable treatment for nonmanagement employees. If a company can provide an alternative means of demonstrating that this equity condition is satisfied, the two groups may be combined.

3. Application of the Pay Standards to Collective Bargaining Agreements

The pay standard does not apply to existing contractual agreements reached before announcement of the program. Instead, it requires that the annual rate of increase of pay rates dictated by any *new* collective bargaining agreement (any agreement entered into during the program year) be no greater than 7 percent compounded over the contract term. Since these increases are compounded, pay rates can increase by approximately 14½ percent over the live of a two-year agreement and 22½ percent over the life of a three-year agreement. Under such multi-year agreements, however, the total allowable increase must be allocated fairly evenly over the life of the contract—no more than 8 percent of the total allowable increase can occur in any single year of such an agreement. This allows for some "front loading," a common characteristic of labor contracts.

A large and increasing number of collective bargaining agreements have built-in escalators, or cost-of-living adjustments. The actual pay-rate increases generated under these contracts will depend on the actual rates of inflation experienced over the contract term. In order to provide a method by which the parties can determine whether a new contract complies with the standard at the time it is signed, cost-of-living adjustments in multi-year contracts are to be evaluated assuming a 6-percent annual inflation rate. This rate is below the anticipated inflation rate for 1979, even assuming full compliance with the pay and price standards, but is a reasonable assumption to make for the period covered by multi-year contracts. For this reason, the 6-percent assumption cannot be employed in labor contracts covering one year or less. One-year contracts with cost-of-living adjustment clauses must be evaluated retrospectively, using the *actual* inflation rate and hence the actual cost to the employer.

4. Application of the Pay Standard to Nonunion Employee Units

For employee units not covered by collective bargaining agreements, the standard requires that average pay rates in the final quarter of the program year be no more than 7 percent greater than the average pay rates in the base quarter. The base quarter is the last complete fiscal or calendar quarter prior to October 2, 1978, and the terminal quarter is the corresponding quarter of 1979.

In many cases, actual pay-rate increases during the coming year will be based on decisions and commitments made prior to the announcement of the program. In order to provide equitable treatment of union and nonunion units, recognition of these situations is necessary. As a result, when pay-rate increases are dictated by the continuation of a formal, documented annual wage and salary program already in operation, the completion of this program is allowed. Similarly, if future pay-rate increases have already been promised or communicated to the recipient employees, these promised increases are allowed. Compliance requires, however, that new pay plans announced during the program year be consistent with the 7-percent standard for the next planning year of the company.

Changes in average pay rates are determined by changes in the pay rates of individual employees and by changes in the composition of the employee group. In some cases, the 7-percent standard would be exceeded solely due to a shift in the composition of employment toward individuals with higher skill levels and, therefore, higher pay rates. To prevent such situations, two methods are provided for neutralizing the effects of skill-mix changes on average pay rates for nonunion groups. The first allows pay-rate increases to be computed as a weighted average of the separate increases for distinct employee subgroups within an employee unit. This is similar to the procedure used in determining the pay-rate increase over the life of a new collective bargaining agreement. The second method allows the computation of pay-rate changes for the group of continuing individuals employed throughout the program year. Using this latter method, pay-rate increases for legitimate, individual promotions and changes in individual job qualifications may be excluded. Under this option, a company that gives company-wide raises (including benefits) of 7 percent and

continues its normal promotional practices will be in compliance with the standard regardless of changes in the employee skill mix during the program year. This approach should be especially useful to small firms that do not typically perform extensive cost-control budgeting analyses.

5. Variable Compensation

Application of the pay standard to nonunion employee groups is complicated by the existence of widely varying, and often complicated, incentive pay plans. Typically, the actual payments received by employees under these plans are not controlled by the firm once these plans are in place. In fact, the primary rationale for these plans is that pay should be high when individual or company performance is good and low when it is not. The primary examples are commission programs, piece-work pay, annual bonus plans, and long-term incentive plans.

Two principles guide the treatment of these programs under the pay standard: (1) all such forms of compensation should be counted as pay and (2) such compensation should be counted as pay when earned rather than when paid (except for discretionary bonuses). Commission and piece-work pay increases in excess of 7 percent under these plans will not put a company out of compliance if it can be shown that the extra pay is attributable to increases in physical volume rather than to rising prices or a change in the pay formula. As noted above, *discretionary* bonuses are counted as pay when received. *Nondiscretionary* bonuses (i.e., bonuses dictated by a fixed formula or rule) are counted as pay when earned. In dealing with incentive pay that is tied to profit, companies should make a projection of the growth in profit and grant salary increases that are consistent with the profit projection and the pay standard. Pay increases that exceed 7 percent because profits rise by more than was reasonably expected will not result in determinations of noncompliance.

"Future-value incentive programs," such as stock option plans (providing the option to purchase stocks at some future date at a currently stipulated price) are treated separately. Under this type of plan, compensation received by exercising a purchase option during the program year will be the result of grants or commitments made before the announcement of the anti-inflation program, and is not charged against the pay standard. Similarly, the compensation value of grants made during the coming year will not be known until several years in the future. In these cases, the 7-percent limitation is applied to the *number of units granted* (per eligible employee) in the coming year compared to the number of units granted (per eligible employee) in the base year. (If eligibility rules are changed, the limitation is applied to the number of units granted per employee in the relevant employee unit.)

6. Exemptions and Exceptions

In the interest of equity and economic efficiency, a number of exceptions and exclusions have been included in the pay standard.

A. Low-wage workers.—Because the poor are least able to bear the burden of fighting inflation, an explicit exemption for low-wage workers is provided. This exemption is effected by requiring that, in the calculation of pay-rate changes, employees earning no more than $4.00 per hour in straight-time wages at the beginning of the program year be excluded from all employee groups. As a result of this exclusion, if pay rates for these low-wage workers increase by more than 7 percent—for example, due to the revision in the minimum wage and the so-called "ripple effect" to avoid compression of the wage structure near the minimum wage—this does not count against the allowable increases for other employees. Also, if pay rates for low-wage workers increase by less than 7 percent, these lesser increases cannot be used to offset greater increases for other workers.

B. Tandem relationships.—An exception to the pay standard is provided for reasons of equity to allow for the continuation of established tandem relationships among employee groups. For example, in some bargaining situations, one or more units traditionally adopt the settlement of a leader unit. Also, some companies have traditionally maintained a fixed differential (or even equality) between the wages of their union and nonunion employees in the same plant or in different plants. Where such tandem relationships exist, it is possible for the follower employee unit to receive a pay-rate increase of more than 7 percent to keep in step with a complying leader unit without being out of compliance. The exception applies, for example, if the leader (collective bargaining) unit signed a contract before the beginning of the program year and the follower unit signs the same contract during the program year. The tandem exception can also be invoked if a leader collective bargaining unit signs a complying contract during the program year that provides for an 8-percent increase in the first year and a follower, nonunion unit is given the same percentage increase.

It should be emphasized that this exception can be invoked only in those situations in which the leader/follower relationship is clear, in terms of both the amount and the timing of pay-rate increases. For example, industry-wide pattern bargaining, in which a settlement with one company—but not always the same company—sets a pattern that is adopted by other companies does not qualify as a tandem relationship because the leader/follower relationship is not fixed over time. Compliance determinations in such situations can, however, be made for the industry as a whole, using the industry-wide base pay rate.

C. Productivity-enhancing work-rule changes.—To promote economic efficiency, pay-rate increases that are traded for work-rule changes that result in demonstrable improvements in productivity are not counted against the 7-percent standard. This exception applies only to collective bargaining situations in which a company has no alternative means of eliminating past contractual work-rule restrictions other than to buy them out through an additional wage-rate increase. The exception does not apply to wage-rate adjustments for improvements in productivity that are not tied to contractual work-rule changes.

D. Acute labor shortages.—Although the pay standard allows for a substantial amount of flexibility in setting pay rates for particular types of workers, this flexibility may be inadequate to retain or attract workers in occupations that are in severely short supply. An explicit exception is therefor provided for cases of acute labor shortages. To invoke this exception, the acute labor shortage must be documented by evidence on the number of vacancies, the time required to fill vacancies, and movements in entry-level pay rates.

E. Undue hardship and gross inequity.—The pay standard, including the above exceptions and exemptions, has been designed to prevent complying workers and businesses from suffering extreme hardship or inequities. Nevertheless, not all situations causing hardship or inequity can be anticipated. For this reason, the standard allows for a general exception for undue hardship and gross inequities. It must be emphasized, however, that to qualify for this exception, a situation must be manifestly unfair. In particular, perceived notions of the need to "catch up" with other groups of workers (even with traditional "comparability groups") do not, in and of themselves, constitute grounds for an exception.

Appendix B. Numerical Example to Illustrate Possible Changes in the Petroleum-Refined Standard

Under the current mix adjustment, the *base-period* gross margin is calculated using program-period quantities. Using the alternative mix adjustment, one would calculate the *program-period* gross margin using base-period quantities. The following example illustrates the difference between the two procedures for changes in product and input mixes that might occur as the result of investments in upgraded refinery processing facilities. On the product side, the mix shifts away from residual oil toward lighter products; on the input side, the mix shifts away from light crude toward heavy crude. The base-year and program-year prices in the example correspond closely to actual average prices during these periods. In the example, the adjustment—and hence the allowable growth in gross margin after the adjustment is made—is much larger using the alternative method. This difference reflects primarily the rapid growth in the price differentials between the base year and the program year.

Tables B–I and B–II show the calculations for the alternative method, while Tables B–III and B–IV refer to the current method. In the former case, the base-year gross margin is $3.50 per barrel, the actual program-year gross margin in $5.77 per barrel, and the constructed program-year gross margin is $3.67 per barrel; hence, the adjustment permits refiners to earn an additional $1.90 per barrel. By comparison, under the current procedure the constructed base-period gross margin is $4.23 per barrel while the actual gross margins in the base period and program year remain the same; hence, the adjustment permits refiners to earn and additional $.83 per barrel, the difference between the constructed and actual base-period gross margins multiplied by 1.135 (the permitted growth in the gross margin over the first two program years).

Table B–I.—*Input-Output Mix Adjustment Example Alternative Method*

Product sales mix	Base year			Program year			Constructed program year		
	Price per barrel (dollars)	Unit sales (K barrels)	Dollar sales (K barrels)	Price per barrel (dollars)	Unit sales (K barrels)	Dollar sales (K barrels)	Price per barrel (dollars)	Unit sales (K barrels)	Dollar sales (K barrels)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Gasoline:									
Regular leaded	$17.50	1,700	$29,750	$32.00	1,500	$48,000	$32.00	1,700	$54,400
Unleaded	19.30	900	17,370	33.60	1,300	43,680	33.60	900	30,240
Premium leaded	20.00	500	10,000	34.40	400	13,760	34.40	500	17,200
Distillates	16.00	2,000	32,000	29.00	2,500	72,500	29.00	2,000	58,000
Residual	12.00	1,130	13,560	22.00	800	17,600	22.00	1,130	24,860
Other	20.00	500	10,000	35.00	600	21,000	35.00	500	17,500
Output mix subtotal	16.74	6,730	112,680	30.50	7,100	216,540	30.04	6,730	202,200

Hydrocarbon cost mix	Base year			Program year			Constructed program year		
	Cost per barrel (dollars)	Quantity (K barrels)	Cost (K dollars)	Cost per barrel (dollars)	Quantity (K barrels)	Cost (K dollars)	Cost per barrel (dollars)	Quantity (K barrels)	Cost (K dollars)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Crude petroleum:									
Light	$12.50	5,000	$62,500	$25.00	3,500	$87,500	$25.00	5,000	$125,000
Heavy	11.00	1,000	11,000	20.00	3,000	60,000	20.00	1,000	20,000
Refined products	15.00	1,000	15,000	30.00	900	27,000	30.00	1,000	30,000
Other hydrocarbons	12.00	50	600	22.00	50	1,100	22.00	50	1,100
Total		7,050	89,100		7,450	175,600		7,050	176,100
Input mix subtotal	13.24	[1]6,730	89,100	24.73	[1]7,100	175,600	26.17	[1]6,730	176,100
Gross margin per sales barrel									
Actual	3.50			5.77			3.87		
Allowable							[2]3.97		

[1] Sales barrels used in computing unit cost.
[2] Equals the actual base-year unit gross margin multiplied by 1.135.

BILLING CODE 3175-01-M

TABLE B-II

Value of Mix Adjustment - Alternative Method

Product Mix

Actual program-period unit revenues

$$= \sum_j p_j(t)\, q_j(t) \;/\; \sum_j q_j(t)$$

$$= \$30.50.$$

Constructed program-period unit revenues

$$= \sum_j p_j(t)\, q_j(o) \;/\; \sum_j q_j(o)$$

$$= \$30.04.$$

Value of product-mix adjustment = (actual unit revenues - constructed unit revenues) x sales volume

= ($30.50 - $30.04) x 7,100,000 = $3,266,000.

Input Mix

Actual program-period unit cost

$$= \sum_i c_i(t)\, v_i(t) \;/\; \sum_j q_j(t)$$

$$= \$24.73.$$

Constructed program-period unit cost

$$= \sum_i c_i(t)\, v_i(o) \;/\; \sum_j q_j(o)$$

$$= \$26.17.$$

Value of input-mix adjustment = (actual unit cost - constructed unit cost) x sales volume

= ($24.73 - $26.17) x 7,100,000 = -$10,224,000.

Effect on Gross Margin (Additional Allowable Gross Margin)

Effect on gross margin = value of product-mix adjustment - value of input-mix adjustment

= $3,266,000 + $10,224,000 = $13,490,000.

BILLING CODE 3175-01-C

Table B-III.—*Input-Output Mix Adjustment Example Current Method*

Product sales mix	Base year			Program year			Constructed base year		
	Price per barrel (dollars)	Unit sales (K barrels)	Dollar sales (K barrels)	Price per barrel (dollars)	Unit sales (K barrels)	Dollar sales (K barrels)	Price per barrel (dollars)	Unit sales (K barrels)	Dollar sales (K barrels)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Gasoline:									
Regular leaded	$17.50	1,700	$29,750	$32.00	1,500	$48,000	$17.50	1,500	$26,250
Unleaded	19.30	900	17,370	33.60	1,300	43,680	19.30	1,300	25,090
Premium leaded	20.00	500	10,000	34.40	400	13,760	20.00	400	8,000
Distillates	16.00	2,000	32,000	29.00	2,500	72,500	16.00	2,500	40,000
Residual	12.00	1,130	13,560	22.00	800	17,600	12.00	800	9,600
Other	20.00	500	10,000	35.00	600	21,000	20.00	600	12,000
Output Mix Subtotal	16.74	6,730	112,680	30.50	7,100	216,540	17.03	7,100	120,940

Hydrocarbon cost mix	Base year			Program year			Constructed base year		
	Cost per barrel (dollars)	Quantity (K barrels)	Cost (K barrels)	Cost per barrel (dollars)	Quantity (K barrels)	Cost (K barrels)	Cost per barrel (dollars)	Quantity (K barrels)	Cost (K dollars)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Crude petroleum:									
Light	$12.50	5,000	$62,500	$25.00	3,500	$87,500	$12.50	3,500	$43,750
Heavy	11.00	1,000	11,000	20.00	3,000	60,000	11.00	3,000	33,000
Refined products	15.00	1,000	15,000	30.00	900	27,000	15.00	900	13,500
Other hydrocarbons	12.00	50	600	22.00	50	1,100	12.00	50	600
Total		7,050	89,100		7,450	175,600		7,450	90,850
Input mix subtotal	13.24	[1]6,730	89,100	24.73	[1]7,100	175,600	12.80	[2]7,100	90,850
Gross margin									
Actual gross margin	3.50			5.77			4.23		
Allowable gross margin				[2]4.80					

[1] Sales barrels used in computing unit cost.
[2] Equals the constructed base-year unit gross margin multiplied by 1.135.

BILLING CODE 3175-01-M

TABLE B-IV

Value of Mix Adjustment - Current Method

Product Mix

Actual base-period unit revenues

$$= \sum_j p_j(o)\, q_j(o) \,/\, \sum_j q_j(o)$$

$$= \$16.74.$$

Constructed base-period unit revenues

$$= \sum_j p_j(o)\, q_j(t) \,/\, \sum_j q_j(t)$$

$$= \$17.03.$$

Value of product-mix adjustments = (constructed unit revenues - actual unit revenues) x 1.135 x sales volume

= ($17.03 - $16.74) x 1.135 x 7,100,000 = $2,336,965.

(note: program-period sales volume used in measuring program-period period value of mix adjustment on unit revenues)

Input Mix

Actual base-period unit cost

$$= \sum_i c_i(o)\, v_i(o) \,/\, \sum_j q_j(o)$$

$$= \$13.24.$$

Constructed base-period unit cost

$$= \sum_i c_i(o)\, v_i(t) \,/\, \sum_j q_j(t)$$

$$= \$12.80.$$

Value of input-mix adjustment = (constructed unit cost - actual unit cost) x 1.135 x 7,100,000

= ($12.80 - $13.24) x 1.135 x 7,100,000 = -$3,545,740.

(note: program-period sales volume used in computing program-period value of mix adjustment on unit cost)

Effect on Gross Margin (Additional Allowable Gross Margin)

Effect on gross margin = value of product-mix adjustment - value of input-mix adjustment

= $2,336,965 + $3,545,740 = $5,882,705.

[FR Doc. 80-20644 Filed 0-00-80; 8:45 am]
BILLING CODE 3175-01-C